

Land Transport (Wheel Clamping) Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Land Transport (Wheel Clamping) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Land Transport Act 1998 to protect motor vehicle users from unreasonable fees charged by some operators of immobilising devices such as wheel clamps.

The bill would:

- regulate the maximum fee an operator could charge
- make it an offence for an operator to charge more than the maximum fee
- make it an offence for an operator to fail to remove the clamp or arrange for its removal
- make these offences enforceable by the Police.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

For clarity, we propose changing the order of some provisions within the bill.

Clarifying meaning of enforcement authority

In the bill as introduced, clause 4 would insert new section 98C (which we propose renumbering as 98D) setting out the requirements on operators of immobilising devi-

ces. However, the requirements would not apply to road controlling authorities (such as territorial authorities) who are enforcement authorities under the Act and able to issue infringement notices. This exclusion is achieved by reference to the definition of “road”, which we found somewhat indirect. For clarity, we recommend amending clause 4 to include new paragraphs (a) and (b) in new section 98D(1).

These provisions would make it clear that the requirements would not apply to parking places that are controlled by enforcement authorities who can issue infringement notices for parking offences. We believe it is worth making clear that the bill is not intended to provide a framework for these authorities to use immobilising devices as an enforcement action.

Claims to the Disputes Tribunal

The bill aims to protect vehicle users by regulating the maximum fee an operator can charge for the removal of an immobilising device. Proposed new section 98E(4) (numbered 98C(9) in the bill as introduced) would make it clear that the offence provision created by section 98D(4) would not prevent matters from being brought before the Disputes Tribunal. We recommend amending new section 98E to include new subsections (5) and (6). The first of these would mean that an operator could not claim more than the prescribed amount of \$100 in a dispute before the Disputes Tribunal.

Our proposed new subsection (6), however, states that subsection (5) would not affect any proceedings relating to damage to an immobilising device that was caused by its removal from a motor vehicle.

Section 98D(5)(b) would protect a person in charge of a motor vehicle from civil or criminal liability for the removal of an immobilising device provided the removal caused as little damage to the device as reasonably possible. The intent of our new subsection (6) is that an operator who claimed an amount for unnecessary or wilful damage to an immobilising device should not be limited by subsection (5).

Requirements for being reasonably available

In the bill as introduced, new section 98C(3) states that an operator must be reasonably available to respond to a request for removal of a device. (With our restructuring, this would now be new section 98D(3).)

We considered specifying a timeframe in which an operator would be required to respond to a motorist and remove a device. However, we do not think it appropriate for this to be in primary legislation, and consider that it would be better managed by regulations. This would allow more flexibility, as a single approach for all operators may not be practicable, or possible, in all parts of the country.

We therefore recommend including subsection (3) in proposed new section 98E. This would require reference to regulations, if any are made, when considering whether an operator had complied with new section 98D(3).

We also recommend amending clause 6 to insert new section 167(1)(me). This would authorise the Governor-General to make regulations prescribing criteria for the purpose of considering whether an operator has complied with new section 98D(3).

Regulation of signage

Many submitters commented that they thought signage requirements should also be regulated under this bill. We considered doing so, but note that this could only relate to immobilising devices, as signage relating to towing and breach notices would be out of the bill's scope.

We believe that regulating signage only for immobilising devices could disadvantage motorists, as the signage would not need to include information for other methods of enforcement for private parking. We note, however, that future legislation could be brought to address this issue.

Appendix

Committee process

The Land Transport (Wheel Clamping) Amendment Bill was referred to the committee on 9 April 2019. The closing date for submissions was 30 May 2019. We received and considered 25 submissions from interested groups and individuals. We heard oral evidence from seven submitters.

We received advice from the Ministry of Business, Innovation and Employment, the Ministry of Transport, and the New Zealand Police.

Committee membership

Darroch Ball (Chairperson)

Chris Bishop (from 24 July 2019)

Paul Eagle

Raymond Huo (from 31 July 2019)

Matt King

Jan Logie

Jami-Lee Ross

Alastair Scott (until 24 July 2019)

Hon Aupito William Sio (until 24 July 2019)

Jamie Strange (from 24 July 2019)

Tim van de Molen

Hon Meka Whaitiri (until 31 July 2019)

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Land Transport (Wheel Clamping) Amendment Act **2019**.

2 Commencement

This Act comes into force on the 42nd day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Land Transport Act 1998 (the **principal Act**).

4 New Part 7A inserted

After section 98B, insert:

Part 7A		
Immobilising devices applied to parked motor vehicles		
98C	<u>Interpretation</u>	5
	<u>In this Part,—</u>	
	<u>immobilising device means a wheel clamp or other device that is intended to immobilise a motor vehicle or restrict or impede its movement</u>	
	<u>operator means a person who has control over an immobilising device</u>	
	<u>parking place means a place on a road on which a person is able to park their motor vehicle</u>	10
	<u>prescribed amount means the amount prescribed in regulations made under section 167(1)(md), but if no regulations are made, the prescribed amount is \$100 (inclusive of GST).</u>	
98CD	<u>Immobilising devices applied to parked motor vehicles</u>	15
(1)	This section applies if an operator applies an immobilising device to a motor vehicle parked in a parking place, unless the operator's actions are authorised by or under an enactment; unless—	
	(a) <u>the parking place is on a road under the control of an enforcement authority who may issue infringement notices for parking offences under this Act; or</u>	20
	(b) <u>the operator's actions are authorised by or under an enactment.</u>	
(2)	The operator—	
	(a) must not require the person in charge of the motor vehicle to pay a fee (relating to the removal of the immobilising device or any other matter) that exceeds the prescribed amount; and	25
	(b) may require the fee to be paid before the immobilising device is removed; and	
	(c) must, when requested by the person in charge of the motor vehicle, remove, or arrange for the removal of, the immobilising device—	30
	(i) as soon as is reasonably practicable after the fee is paid; or	
	(ii) if there is no fee, at the direction of the person in charge of the motor vehicle.	
(3)	The operator must be reasonably available to respond to a request by the person in charge of the motor vehicle relating to the removal of the immobilising device.	35

- (4) A person who contravenes **subsection (2)(a) or (c)** commits an offence and is liable on conviction to a fine not exceeding \$3,000, in the case of an individual, or \$15,000, in the case of a body corporate.
- (5) If the operator fails to comply with **subsection (2)(c)** or fails to comply with **subsection (3)** after the person in charge of the motor vehicle has made reasonable efforts to contact the operator, the person in charge of the motor vehicle— 5
- (a) may remove or arrange for the removal of the immobilising device from the motor vehicle; and
- (b) is not under any civil or criminal liability for the removal if it causes as little damage to the immobilising device as is reasonably possible. 10
- (6) ~~For the purpose of enforcing this section, and without limiting section 113, an enforcement officer may remain in a parking place to—~~
- (a) ~~direct an operator to remove an immobilising device from a motor vehicle within a specified time; and~~ 15
- (b) ~~remove an immobilising device from a motor vehicle or arrange for its removal.~~
- (7) ~~A person may enter and remain in a parking place for the purpose of removing an immobilising device from a motor vehicle if an enforcement officer, or the person in charge of the motor vehicle, has arranged, in accordance with this section, for the person to remove the device.~~ 20
- (8) This section does not of itself authorise an operator to apply an immobilising device to a motor vehicle parked in a parking place.
- (9) ~~To avoid doubt, **subsection (4)** does not prevent a matter from being brought before the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 for the exercise of that tribunal's jurisdiction under that Act.~~ 25
- (10) In this section,—
- immobilising device** means a wheel clamp or other device that is intended to immobilise a motor vehicle or restrict or impede its movement
- operator** means a person who has control over an immobilising device 30
- parking place** means a place on a road on which a person is able to park their motor vehicle
- prescribed amount** means the amount prescribed in regulations made under **section 167(1)(md)**, but if no regulations are made, the prescribed amount is \$100 35
- road** has the meaning given by section 2(1) but does not include a road under the control of an enforcement authority.

98E Enforcement of section 98D and related matters

- (1) For the purpose of enforcing **section 98D**, and without limiting section 113, an enforcement officer may remain in a parking place to—
- (a) direct an operator to remove an immobilising device from a motor vehicle within a specified time; and
 - (b) remove an immobilising device from a motor vehicle or arrange for its removal.
- (2) A person may enter and remain in a parking place for the purpose of removing an immobilising device from a motor vehicle if an enforcement officer or the person in charge of the motor vehicle has arranged in accordance with this section or **section 98D** for the person to remove the device.
- (3) In considering whether an operator has complied with **section 98D(3)** and without limiting the generality of that section, regard must be had to any criteria prescribed in regulations.
- (4) To avoid doubt, **section 98D(4)** does not prevent a matter from being brought before the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 for the exercise of that tribunal’s jurisdiction under that Act.
- (5) In any proceedings before a Disputes Tribunal where an operator claims an amount in respect of a dispute to which **section 98D** applies, no more than the prescribed amount may be claimed.
- (6) Nothing in **subsection (5)** affects proceedings before a Disputes Tribunal relating to any damage caused to an immobilising device as a result of its removal from a motor vehicle.

5 Section 116 amended (Enforcement of directions)

In section 116(1), replace “113 or section 115” with “**98GE**, 113, or 115”. 25

6 Section 167 amended (Regulations)

After section 167(1)(mc), insert:

- (md) prescribing, for the purpose of **section 98GD(2)(a)**, the maximum amount that may be charged by an operator:
- (me) prescribing criteria for the purpose of considering whether an operator has complied with **section 98D(3)**:

Legislative history

4 April 2019
9 April 2019

Introduction (Bill 123–1)
First reading and referral to Transport and Infrastructure
Committee