

Land Transport (Street and Illegal Drag Racing) Amendment Bill

Government Bill

Explanatory note

The purpose of this bill, which is inspired by successful New South Wales legislation, is to combat the problem of illegal street and drag racing and the practice of performing wheel spins and other dangerous stunts on public roads. This bill amends the Land Transport Act 1998 to:

- empower the Police to impound, at the roadside, vehicles involved in these activities; and
- create new offences specifically relating to these activities; and
- provide for persons convicted of these offences to be subject to a range of penalties, including in certain cases confiscation of the vehicle involved.

Under the principal Act, the Police must impound, at the roadside, motor vehicles driven by persons:

- who are disqualified from holding or obtaining a driver licence; or
- whose driver licence is suspended or revoked; or
- who have been forbidden to drive because the person was an unlicensed driver or his or her driver licence had expired.

This bill establishes a separate, but broadly similar regime including a process for impounding and storing motor vehicles, and rights of appeal for the owner of an impounded vehicle.

Hon Mark Gosche

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Land Transport (Street and Illegal Drag Racing) Amendment Act **2002**.
- (2) In this Act, the Land Transport Act 1998¹ is called “the principal Act”. 5

¹ 1998 No 110

2 Commencement

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

- 3 Purpose**
The purpose of this Act is to amend the Land Transport Act 1998 to combat the problem of illegal street and drag racing and the practice of performing wheel spins and other dangerous stunts on public roads. 5
- 4 New sections 7A to 7C inserted**
The principal Act is amended by inserting, after section 7, the following sections:
- “7A Motor racing on road**
“**(1)** A person must not promote or take part in a competition, race, or trial of speed between motor vehicles on a road. 10
“**(2)** Nothing in this section or in **section 7B or section 7C** applies to the operation of a motor vehicle for the purposes of a race or trial undertaken in accordance with an approval given under section 77(1)(u) of the Transport Act 1962 or clause 11(e) of the Tenth Schedule of the Local Government Act 1974. 15
- “7B Persons not to intentionally place substances on road**
A person must not intentionally pour or place on any road, any petrol, oil, diesel fuel, or any other substance likely to cause loss of traction by any motor vehicle. 20
- “7C Prohibited activity on road**
A person must not operate a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction without reasonable excuse.”
- 5 New sections 36A to 36D inserted** 25
The principal Act is amended by inserting, after section 36, the following sections:
- “36A Contravention of section 7A and section 7C**
“**(1)** A person commits an offence if the person contravenes **section 7A or section 7C.** 30
“**(2)** If a person is convicted of an offence against **subsection (1)**,—
“**(a)** the maximum penalty is a fine not exceeding \$4,500:
“**(b)** the court must order the person to be disqualified from holding or obtaining a driver licence for 6 months or more. 35

- “(3) The imposition of a mandatory disqualification under this section is subject to section 81.
- “(4) If a person is convicted of a second or subsequent offence against **subsection (1)** (whether or not of the same kind of offence as the previous offence),— 5
- “(a) the maximum penalty is a fine not exceeding \$6,000:
- “(b) the court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more:
- “(c) the court may make an order for the confiscation of the motor vehicle according to the procedures set out in the Criminal Justice Act 1985. 10
- “(5) The imposition of a mandatory disqualification under this section is subject to section 81.
- “**36B Contravention of section 7A or section 7C involving injury or death** 15
- “(1) A person commits an indictable offence if the person commits an offence under **section 36A(1)**, and by that act causes an injury to or the death of another person.
- “(2) If a person is convicted of an offence against **subsection (1)**,— 20
- “(a) the maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000:
- “(b) the court must order the person to be disqualified from holding or obtaining a driver licence for 1 year or more:
- “(c) the court may make an order for the confiscation of the motor vehicle according to the procedures set out in the Criminal Justice Act 1985. 25
- “(3) The imposition of a mandatory disqualification under this section is subject to section 81.
- “**36C Contravention of section 7B**
- “(1) A person commits an offence if the person contravenes **section 7B**. 30
- “(2) If a person is convicted of an offence against **subsection (1)**, the maximum penalty is a fine not exceeding \$4,500.
- “**36D Contravention of section 7B involving injury or death**
- “(1) A person commits an indictable offence if the person commits an offence under **section 36C(1)**, and by that act causes an injury to or the death of another person. 35

“(2) If a person is convicted of an offence against **subsection (1)**, the maximum penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000.”

6 Vehicles in storage

(1) Section 49(1)(a) of the principal Act is amended by omitting the expression “and 123”, and substituting the expression “123, and **123A**”. 5

(2) Section 49(1)(b) of the principal Act is amended by omitting the expression “and 123”, and substituting the expression “123, and **123A**”. 10

7 Powers of entry

Section 119 of the principal Act is amended by,—

(a) omitting from subsection (3) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”: 15

(b) omitting from subsection (4) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”:

(c) omitting from subsection (5) the expression “or section 123”, and substituting the expression “section 123, or **section 123A**”. 20

8 New sections 123A to 123E inserted

The principal Act is amended by inserting, after section 123, the following sections:

“**123A Vehicle to be seized and impounded for 28 days in certain circumstances** 25

“(1) An enforcement officer may seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds that a person drove the vehicle on a road while— 30

“(a) taking part in a competition, race, or trial of speed between motor vehicles on a road; or

“(b) operating a motor vehicle, in such a manner as to cause the vehicle to undergo sustained loss of traction without reasonable excuse. 35

- “(2) An enforcement officer who seizes and impounds (or authorises the impoundment of) a motor vehicle under this section must—
- “(a) complete a notice in the prescribed form, or in a form to the same effect, acknowledging the seizure and impoundment, and setting out (if the particulars are reasonably ascertainable)—
 - “(i) the name and address of the driver; and
 - “(ii) the year and make of the vehicle, and its registration plate details or vehicle identification number; and
 - “(iii) the date and time of the seizure; and
 - “(iv) the place where the vehicle is to be impounded; and
 - “(v) an outline of the person’s rights of appeal under **section 123D and section 123E**; and
 - “(b) give the driver a copy of the notice, unless the driver has left the scene; and
 - “(c) give the registered owner of the vehicle a copy of the notice, if the registered owner is present at the time of the seizure, or as soon as practicable send a copy to the registered owner by ordinary post to the registered owner’s last known place of residence or business or postal address, or address as recorded on the Register of Motor Vehicles; and
 - “(d) cause a copy of the notice to be given to the storage provider who stores the motor vehicle; and
 - “(e) retain a copy of the notice for 12 months.
- “(3) The owner of an impounded vehicle has the rights of appeal provided in **sections 123D and 123E**.
- “(4) Personal property (other than property attached to or used in connection with the operation of the vehicle) present in a motor vehicle at the time of the seizure and impoundment must be released on request to a person who produces satisfactory evidence to the effect that he or she was lawfully entitled to possession of the vehicle or personal property immediately before the vehicle was moved, and goods present in a motor vehicle at the time of the seizure and impoundment must be released subsequently to a person acting on behalf of the owner of the goods if the person produces satisfactory evidence of the owner’s consent to such release.

- “(5) A vehicle to which a notice under this section relates must be released to the owner if—
- “(a) the Police have decided finally that proceedings will not be taken against the person who drove the vehicle in circumstances referred to in **subsection (1)** or such proceedings have been taken and the person is acquitted; and
- “(b) the vehicle has not already been released.
- “(6) Nothing in this section authorises the seizure or impoundment of a trailer or any other vehicle without motive power that is being towed by or is attached to a motor vehicle.
- “(7) Nothing in **subsection (1)** applies to a person operating a motor vehicle for the purposes of a race or trial undertaken in accordance with an approval given under section 77(1)(u) of the Transport Act 1962 or clause 11(e) of the Tenth Schedule of the Local Government Act 1974.
- “**123B Storage of impounded vehicles**
- “(1) A motor vehicle seized and impounded under **section 123A** must be stored where the enforcement officer directs.
- “(2) The owner of the impounded vehicle is liable to pay the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167.
- “(3) The fees and charges referred to in **subsection (2)** are recoverable from the owner of the vehicle by the vehicle recovery service operator or storage provider.
- “(4) Nothing in **subsection (3)** limits or affects any rights against the owner of the vehicle, or in respect of the vehicle, that may be exercised by the vehicle recovery service operator or storage provider.
- “(5) A person may not remove or release from storage an impounded motor vehicle, unless allowed to do so under this Act.
- “(6) The storage provider must immediately comply with a direction under this Act to release the vehicle to the owner or a person authorised for the purpose by the owner.
- “(7) The Commissioner, or an enforcement officer authorised for the purpose by the Commissioner, may enter into such

arrangements with vehicle recovery service operators and storage providers as he or she thinks necessary for the purposes of this section.

“123C **Release of vehicle after 28 days**

- “(1) On or after the close of the 28 day impoundment period, the registered owner of the vehicle, or a person authorised for the purpose by the registered owner, is entitled to remove the vehicle from storage by— 5
- “(a) showing the storage provider proof of identity and either proof of ownership of the vehicle or the owner’s copy of the notice of acknowledgement of seizure and impoundment; and 10
 - “(b) paying the fees and charges for towage and storage of the vehicle, or entering into an arrangement to pay those fees and charges. 15
- “(2) The storage provider is directed to release the vehicle as soon as practicable after **subsection (1)** is satisfied.
- “(3) If—
- “(a) a further 28 days has elapsed since the close of the 28-day impoundment period; and 20
 - “(b) the owner, or a person authorised for the purpose by the owner, has not claimed the vehicle and has not paid the fees and charges for towage and storage of the vehicle or entered into an arrangement to pay those fees and charges; and 25
 - “(c) no other person has, within that period, established to the satisfaction of the authorised officer that the person is entitled to possession of the vehicle,—
- the storage provider may apply to an enforcement officer authorised for the purpose by the Commissioner for approval to dispose of the vehicle and may, with the officer’s approval, dispose of the vehicle on such terms and conditions as the officer thinks fit. 30
- “(4) On obtaining approval under **subsection (3)**, the storage provider becomes the owner of the vehicle for all purposes. 35

“123D Appeal to Police against impoundment of vehicle

- “(1) An owner whose motor vehicle has been seized and impounded under **section 123A** may appeal to the Police against the seizure and impoundment on the grounds that—
- “(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or
 - “(b) the enforcement officer who seized the vehicle did not have reasonable grounds of belief as required by **section 123A** or did not comply with the notice requirements in **subsection (2)** of that section; or
 - “(c) the owner did not know and could not reasonably have been expected to know that the driver would contravene **section 7A or section 7C**; or
 - “(d) the owner took all reasonable steps to prevent the driver from contravening **section 7A or section 7C**.
- “(2) **Subsection (1)(c)** does not apply where the driver has previously been convicted of an offence against **section 7A or section 7C**.
- “(3) An appeal under this section must be set out in a statutory declaration.
- “(4) An enforcement officer authorised for the purpose by the Commissioner may hear and determine the appeal, and if satisfied that a ground referred to in **subsection (1)** has been established, the authorised officer must direct that the vehicle be released immediately to the owner or a person authorised by the owner.
- “(5) The authorised officer must consider and determine the appeal as soon as reasonably practicable, and,—
- “(a) in the case of an appeal lodged on the ground set out in **subsection (1)(a)**, determine the appeal not later than 2 working days after the day of lodgement;
 - “(b) in any other case, determine the appeal not later than 5 working days after the day of lodgement.
- “(6) The authorised officer may refuse to consider an appeal under this section if satisfied that the appeal is frivolous or vexatious, or that the appellant has provided insufficient information.

**“123E Appeal against refusal of Police to direct release of
impounded vehicle**

- “(1) A person who unsuccessfully appeals to an enforcement officer under **section 123D** may, on any grounds set out in **subsection (1)** of that section, appeal to a District Court against the decision under that section. 5
- “(2) The court must determine the appeal on 1 or more of the grounds set out in **subsection (1) or subsection (5) of section 123D** and may not consider any other grounds.
- “(3) The court may— 10
- “(a) direct that the vehicle be released immediately to the person, in which case that direction has effect as if it had been made under **section 123D** by the authorised enforcement officer; or
- “(b) dismiss the appeal.” 15