

VEHICLE RECOVERY SERVICES BILL

EXPLANATORY NOTE

Clause 1 relates to the Short Title.

Clause 2 abolishes the rule of law known as *distress damage feasant* so far as it applies to motor vehicles. It will no longer be lawful to detain a motor vehicle as a condition of the payment of damages for an injury alleged to have been caused by the vehicle. It will be open to owners of land to recover the towage fees, and any other expenses and damages they have suffered from illegal parking, by taking action in the District Court or the Disputes Tribunal.

Clause 3 provides for maximum fees to be prescribed in respect of towing. This will bring the fees charged for towing from private property under control in the way that fees charged for towing from roads are already controlled. The fee is payable by the owner of the vehicle to the owner of the land or building and may be recovered in the Small Claims Tribunal. The owner of the land or building cannot assign the right to recover the fee.

Clause 4 creates offences. The first relates to charging in excess of the prescribed towage fee. The second relates to detaining a motor vehicle which has been towed away from private property.

Clause 5 will require an individual authority for each separate tow undertaken by a vehicle recovery service in place of the present rules whereby a vehicle recovery service may be given a general authority by the owner of land to tow vehicles away from that land.

Clause 6 enables complaints about the operations of vehicle recovery services to be made to the Ministry of Transport which is required to record them and make them available for public inspection. This replaces the present system whereby complaints are made to the vehicle recovery service itself.

No. 94—1

Price
incl. GST \$2.30

Mr Trevor Rogers

VEHICLE RECOVERY SERVICES

ANALYSIS

Title	4. Offences in respect of motor vehicles
1. Short Title	5. Restriction on moving of vehicles by vehicle recovery service
2. Distress damage feasant	6. Complaints regarding operation of vehicle recovery service
3. Towage fees	

A BILL INTITULED

An Act to amend the law in respect of the operation of vehicle recovery services

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Vehicle Recovery Services Act 1991.

2. Distress damage feasant—The rule of law known as *distress damage feasant* shall cease to have effect in respect of motor vehicles.

10 **3. Towage fees**—(1) The Secretary for Transport shall from time to time, by notice in the *Gazette*, prescribe the maximum amounts that may be charged as towage fees in respect of the towing of vehicles from any land or building that is not a road.

15 (2) Different maximum towage fees may be prescribed for different areas, times or vehicles.

 (3) Any towage fee payable in respect of the towing of any vehicle shall be a debt owing by the owner of the vehicle towed to the owner of the land or building from which the vehicle is towed and may be recovered in the Disputes Tribunal. No right
20 of action in respect of such a debt may be assigned or otherwise transferred to any other person.

(4) Nothing in this section prevents any person recovering in a Court of competent jurisdiction or in the Small Claims Tribunal any damages or expenses caused by a motor vehicle in addition to the towage fees payable in respect of the towing of that vehicle.

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4. Offences in respect of motor vehicles—Every person who—

(a) Receives or requests the payment of a towage fee in excess of the amount prescribed pursuant to **section 3(1)** of this Act; or

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(b) Without lawful excuse, continues to detain any motor vehicle which has been towed from any land or building that is not a road after its release has been requested by the owner of the vehicle or by a person acting with the express written authority of the owner;

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commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

5. Restriction on moving of vehicles by vehicle recovery service—Part II of the Third Schedule to the Transport Services Licensing Act 1989 is hereby amended by revoking rule 9, and substituting the following rule:

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“9. No person may move any vehicle using a vehicle recovery service vehicle unless the tow authority has been signed for that particular vehicle by—

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“(a) The driver or a person claiming or appearing to be the owner of the vehicle, or a representative of the owner; or

“(b) A constable, traffic officer, parking warden, or emergency service officer; or

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“(c) Where the vehicle is being towed from any land or building that is not a road, the owner or a person acting with the express written authority of the owner of the land or building.”

6. Complaints regarding operation of vehicle recovery service—Part II of the Third Schedule to the Transport Services Licensing Act 1989 is hereby amended by revoking rule 13, and substituting the following rule:

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“13. (1) A complaint may be made to any enforcement officer about the operation of a vehicle recovery service. Any

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such complaint shall be in writing and signed by the complainant.

5 “(2) All complaints received by an enforcement officer under **subclause (1)** of this rule shall be entered in a vehicle recovery service complaints book to be maintained by the Secretary.

“(3) The complaints book shall be made available for public inspection during office hours.”