



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019: Infringement offence and fee for wheel clamping breach	<b>Date to be published</b>	8 January 2020

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
3 December 2019	Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019: Infringement offence and fee for wheel clamping breach	<i>Office of the Minister of Commerce and Consumer Affairs</i>
3 December 2019	<i>LEG-19-MIN-0197 Land Transport Amendment Regulations: Infringement offence and fees for wheel clamping breach</i>	<i>Cabinet Office</i>

**Information redacted**

**NO**

In Confidence

Office of the Minister of Commerce and Consumer Affairs  
Chair, Cabinet Legislation Committee

## **Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019: Infringement offence and fees for wheel clamping breach**

### **Proposal**

1. This paper seeks authorisation for submission to the Executive Council of the Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019. The regulations create an infringement offence and set infringement fees for a breach of requirements in the Land Transport (Wheel Clamping) Amendment Act 2019.

### **Policy**

2. Wheel clamping is a common method of parking enforcement on private land. There is no specific legislation regulating wheel clamping as a method of parking enforcement. This has meant that motorists are often charged unreasonable fees for the release of their vehicle and that wheel clamping is often the subject of complaints from motorists.
3. The Land Transport (Wheel Clamping) Amendment Act 2019 (**the Amendment Act**) amends the Land Transport Act 1998 to regulate the maximum fees charged by wheel clamp operators. The Amendment Act sets a maximum default fee of \$100 that can be charged for the removal of a clamp and other associated fees. The Amendment Act makes it an offence for a person to charge more than the maximum fee, or to fail to remove or arrange for the removal of a clamp.
4. On 13 August 2018 Cabinet agreed [CAB-18-MIN-03792 refers] that:
  - 4.1. a breach of the maximum fee for wheel clamping be an infringement offence with:
    - 4.1.1. an infringement fee of \$1,000 for an individual and \$5,000 for a body corporate;
    - 4.1.2. a fine of up to \$3,000 for an individual and up to \$15,000 for a body corporate (if the person is charged with the offence in court).
  - 4.2. New Zealand Police would be the enforcement agency for wheel clamping regulation on private land.
5. Creating an infringement offence will allow Police to issue on-the-spot infringement notices to persons who breach the requirements of the Bill, rather than taking them to court. This will provide for an efficient enforcement process.
6. The Amendment Act gives effect to the Cabinet decision to create an offence to be enforced by New Zealand Police.

7. To align with the way offences and infringement offences are set out in the Land Transport Act and associated regulations, the offence is set out in the Amendment Act. The infringement offence and infringement fees are set out in regulations made under the empowering provisions in the Land Transport Act.
8. The Land Transport Act provides that the Governor-General may, by Order in Council, make regulations for the following purposes:
  - 8.1. Section 167(1)(b): specifying infringement offences for the purposes of the Land Transport Act (section 167(1)(b)); and
  - 8.2. Section 167(1)(e): setting the infringement fee for each offence prescribed under section 167(1)(b).
9. The Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019 will give effect to the Cabinet decision to create an infringement offence for a breach that would otherwise be an offence under the Amendment Act, with a maximum infringement fee of \$1,000 for an individual and \$5,000 for a body corporate.

#### **Timing and 28-day rule**

10. The regulations will come into force on 10 January 2020, which is at least 28 days after their notification in the *New Zealand Gazette*.

#### **Compliance**

11. The regulations comply with each of the following:
  - 11.1. the principles of the Treaty of Waitangi;
  - 11.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 11.3. the principles and guidelines set out in the Privacy Act 1993;
  - 11.4. relevant international standards and obligations;
  - 11.5. the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

#### **Regulations Review Committee**

12. I do not consider there to be any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

#### **Certification by Parliamentary Counsel**

13. The Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019 have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

## Impact Analysis

14. A [regulatory impact assessment](#) was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval of the policy relating to the Amendment Act was sought [CAB-18-MIN-03792 refers].

## Publicity

15. No publicity is planned other than notification in the *New Zealand Gazette*.

## Proactive Release

16. This paper will be proactively released in whole within 30 business days on the Ministry of Business, Innovation and Employment's website.

## Consultation

17. The Minister of Transport was consulted and agreed to the submission of this paper.
18. The Ministry of Transport, the New Zealand Police, the Ministry of Justice and the Treasury were consulted on this paper. The Department of Prime Minister and Cabinet (Policy Advisory Group) has been informed.

## Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 13 August 2018 Cabinet agreed to create an infringement offence for a breach that would otherwise give effect to an offence under the Land Transport (Wheel Clamping) Amendment Act 2019, with a maximum infringement fee of \$1,000 for an individual and \$5,000 for a body corporate [CAB-18-MIN-03792 refers];
2. **note** that the Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019 give effect to the decision referred to in paragraph 1 above;
3. **authorise** the submission to the Executive Council of the Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019;
4. **note** that the Land Transport (Offences and Penalties) Amendment Regulations (No 3) 2019 come into force on 10 January 2020.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs