Impact Summary: Wheel clamping

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis
The analysis in this report is largely based on anecdotal evidence of the problem, particularly from media reports. Anecdotal evidence is not sufficient for the Ministry to assess the scale of the problem, however we have used this evidence to assess the degree of the existing and potential harmful impacts on motorists. Our analysis is also limited by our access to accurate evidence about the market for wheel clamping. We do not have a full list of the parties proposed to be subject to additional regulation (i.e. all the operators involved in wheel clamping on private land). This is due in part to the fact that there is no single regulatory agency responsible for dealing with wheel clamping. Similarly, our analysis of the problem of unreasonable fees largely relies on anecdotal evidence of the range of fees that some motorists have been charged. MBIE has not carried out formal consultation on the issues raised in this report. We have been able to obtain the views of motorist and consumer representative groups and are aware of their preferred option. However, the views of potentially regulated parties (wheel clamp operators) are not represented. We acknowledge that we therefore may not be aware of the full range of impacts that may be had on the wheel clamping market. We have also had significant time constraints on this analysis. If we had more time, we would have liked to have carried out extensive consultation with a range of interested parties and gathered more evidence about the nature and scale of the problem.

Responsible Manager (signature and date):
Authorised by: Jennie Kerr Competition & Consumer Policy Ministry of Business, Innovation and Employment 20 April 2018

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Current situation

Parking enforcement on private land typically takes place on privately owned car parks such as commercial car park buildings and shop car parks. In this sense, parking is a "service" provided by the business or property owner which is "purchased" by the motorists. Motorists may also park their cars on privately owned land where a parking service is not provided, such as on non-commercial property or other land where motorists do not have permission to park, such as a staff car park.

Parking enforcement on private land generally takes three forms:

a) the issuing of 'breach notices' (a notice imposing enforcement fees, usually given to the driver or attached to the vehicle)

b) towing a vehicle and charging a fee to have the vehicle released

c) clamping a vehicle's wheel(s) and charging a fee to have the vehicle released.

The problems and options identified in this assessment focus on wheel clamping (the third form listed above).

Our starting principle is that property owners have a right to control access to and use of their land. Where parking is a service, owners are justified in seeking reasonable redress if motorists park on their land without meeting the owner's requirements concerning time restrictions or fees, provided that these terms and conditions are set out. Motorists are under no obligation to park on private property or use these car parks if they object to – or cannot – meet the owner's requirements.

Property owners may enforce their property rights in relation to parking on their property in a number of ways. Some parking enforcement companies are subsidiaries of car park operators. These enforcement companies may provide enforcement services for their parent company, and they may also provide services independently of their parent company: to someone else who operates a car park; a property owner; or a lessee (e.g. a business owner renting the property).

Other enforcement companies may have no direct affiliations with car park operators, but may enter contracts with a property owner or a lessee to provide parking enforcement services. In addition, some property or business owners may enforce parking breaches themselves or have their staff do so.

We do not have an accurate sense of the market structure or market share of wheel clamp operators. We do not have confirmation that all of the companies we have identified are still in operation and there are likely to be other wheel clamp operators who operate in the market of which we are unaware. Additionally we have not attempted to quantify property or business owners who carry out enforcement themselves rather than contracting an enforcement company to do so.

It is our understanding that wheel clamping comprises a relatively small portion (in terms of affected motorists) of the market for private parking enforcement overall. However, we understand that the most egregious behaviour is often attributed to wheel clamping. As such, we have been directed to focus on wheel clamping as the area for regulation.

Regulatory framework

There is no legislation that specifically governs parking rights and wheel clamping or allowable charges for clamping on private land. However, there is a range of statutes and common law principles (i.e. law which is not written into statute but has developed in the courts over time) which may apply depending on the situation.

As such, there is no single regulatory system in which wheel clamping appears to fit neatly. Issues to do with wheel clamping span across a number of regulatory systems and various government departments have an interest or may have some role in regulating private parking enforcement.

This includes MBIE, which oversees the consumer and commercial regulatory system that works towards the long-term interests of consumers. Our role is applicable to wheel clamping in that consumers may suffer harm from unreasonable practices. It also includes the Ministry of Transport, which has an interest because affected consumers are motor vehicle users. The Ministry of Transport has responsibility for regulating parking enforcement on public land and it has some specific legislation which applies to towing operators. The Ministry of Justice also has a role in its responsibility for general contract law, which is part of the regulatory framework for wheel clamping, and in specific legislation which may apply to some wheel clamp operators.

Depending on the situation, private land owners may seek to apply charges for wheel clamping using the following legal principles:

a. The law of contract: when someone parks on private land, they are implicitly agreeing to a contract. They may breach the contract by staying too long, or by parking where it is prohibited to do so. Contractual charges may be applied to compensate the parking operator or land owner for losses suffered from the breach by the motorist. The law of contract prohibits the fees charged by a wheel clamper to include an element that amounts to a penalty. Motorists have the right to refuse to pay and to challenge the validity of the notice through the Disputes Tribunal. However, because the fee is demanded prior to removal, the motorist has little ability to exercise that right before paying the fee, and is less likely to challenge the payment later.

b. The law of trespass: when someone parks on private land and they are not welcome, they may be in breach of trespass law. Damages may be claimed or an injunction applied to prevent further trespass. The common law doctrine of ‘distress damage feasant’ provides that charges can only cover the ‘damage’ caused by the driver to the land owner. Damage could be, for example, the lost revenue resulting from someone using a parking space that could otherwise be used by someone else, and may also include the administrative costs of applying the clamp.

Consumer laws may protect motorists in wheel clamping situations:

a. The Fair Trading Act 1986 applies to anyone in trade, including car park operators and commercial land owners and lessees. Under the Fair Trading Act, signs and information provided by the operator of a car park must be accurate and not misleading. If signage or representations of the terms and conditions of parking (including potential consequences of clamping) are missing key information or make inaccurate statements about legal rights, this may result in a misleading representation.

b. The Consumer Guarantees Act 1993 applies when a service has been provided to a consumer, including car parking services. The guarantee that a service will be carried out with reasonable care and skill applies to information a trader

provides about parking rights. Motorists occupying a car park provided as a service have the right to clear instructions about (where relevant) operating hours, fees and payment, reserved and unreserved parking and consequences of breaching conditions.

There are also specific licensing requirements under the following law:

a. Wheel clamp operators who provide wheel clamping services to others sometimes meet the definition of a 'property guard' under the Private Security Personnel and Private Investigators Act 2010, which is administered by the Ministry of Justice. Property guards are required to be licensed by the Private Security Personnel Licensing Authority, which also has a complaints and disciplinary function. We are unsure whether or not the wheel clamp operators who cause most complaints are complying with any applicable licensing requirements. Businesses or individuals that undertake wheel clamping on their own premises are excluded from the definition of 'property guard' under the Act.

Why is the current situation a problem?

Issues relating to wheel clamping on private land receive regular media attention and public complaints. Concerns generally relate to over-zealous enforcement, high charges and non-existent or unclear signage.

We have categorised the main problems that motorists face as a result of a gap in regulation, or unclear regulation of the industry. These are:

- unreasonable fees
- unclear signage
- intimidating and unfair behaviour by wheel clamp operators
- lack of opportunity for appeal or recourse prior to paying the release fee.

Unreasonable fees

The law is not clear on the exact charges that are reasonable for a breach. Rules governing parking rights and enforcement on private land may be considered unclear or untested. There is very little case law on the application of contract and trespass law to wheel clamping. In practice, it is up to wheel clamp operators or property owners to set the amount of release fees.

As a result of the lack of clarity in the law, motorists are unlikely to understand in what circumstances they might successfully dispute a fee. Motorists may also not wish to pay the cost of lodging an application with the Disputes Tribunal to dispute the fee if the fee itself is not substantially higher than the cost of an application ($45 for claims under $2,000).

Despite the law being unclear, there is evidence that motorists are charged disproportionate fees for the release of their vehicle once clamped. The fees may be disproportionate to the period of time in breach or to the possible costs of the breach to the property owner (such as applying and removing the clamp and any loss of income caused by the parking). These fees can also be inconsistent with fines for more serious driving offences. Some examples of fees that are likely to be unreasonable, and that we have anecdotal evidence of, are $760 for half an hour of parking and $480 to release a clamp after parking for five minutes. We have also seen complaints whereby the initial charges for releasing a clamped vehicle were raised after the affected motorists attempted to negotiate or dispute the fee at the time.

Intimidating and unfair behaviour

There is some evidence that motorists are subjected to intimidating and unfair behaviour by wheel clampers, although we do not have accurate data on the scale on which this behaviour is occurring. It is possible that the type of conduct which has been receiving complaints is attributable to a small number of operators, rather than being an industry-wide problem. Much of the evidence of this problem is anecdotal.

Common complaints that appear in the media include that wheel clampers lie in wait to clamp vehicles not long after the motorist has vacated the vehicle, that vehicles are clamped with passengers inside, that unauthorised persons have clamped vehicles, and that motorists are subjected to threats and intimidation. Motorists can feel unsafe or powerless in the face of this behaviour, particularly when immediate payment is demanded if they want to recover their vehicle. This can put motorists in a vulnerable position.

The law does not specifically regulate the conduct of wheel clamp operators, except to the extent that conduct such as harassment and misrepresenting legal rights is prohibited under the Fair Trading Act. There is nothing in the law that prohibits, for example, the clamping of vehicles thirty seconds after the motorist has vacated. It is unclear whether this would be considered harassment but we think this would be unlikely to meet the test.

Unclear signage

Signage about the risk of being clamped may be absent, unclear or misleading. If signs are available, they may be partially obscured or there may be one small sign far from the entrance to a parking facility. This means that the motorist may not be fully aware of the possible consequences of their parking.

There is a lack of clarity in the law about the circumstances in which clamping may be legal and what conditions exist around clamping on private land. It is unclear whether the terms and conditions of a contract are always necessary to take enforcement action, because a car can be clamped in one of two situations: if it has breached the law of contract (which may or may not require explicit terms and conditions to be made clear to the motorist); or if it has breached the law of trespass (which does not necessarily require a contract).

While motorists may be able to dispute fees or claim damages regardless of whether signage is clear or absent, the problem is that the law is ambiguous about whether terms and conditions need to be displayed. This does not provide clarity for motorists or provide them with the information necessary to be able to confidently take a dispute.

Access to redress

Motorists can take complaints to the Disputes Tribunal if they cannot resolve a complaint directly with an operator. They can also report false or misleading statements or conduct to the Commerce Commission.

However, as the above problems illustrate, motorists may be unclear about what their rights are or may be uncertain about the outcome, particularly as some areas of the law on wheel clamping can be considered unclear or untested. We are also aware that while dispute resolution and enforcement mechanisms are available for some types of issues, consumers may be unaware of their existence or may find accessing them difficult, time consuming or too costly. For example, the time and cost of lodging a Disputes Tribunal application ($45) and attending a hearing may be a barrier, let along the time and cost of taking a case to court.

As there is no dedicated complaints resolution or enforcement agency for wheel clamping, it is hard for motorists to access redress and information about their rights. Even if motorists

attempt to dispute a fee because they believe a parking enforcer's actions may be unreasonable or against the law, there may not be an agency responsible for enforcing a breach of the law in all situations.

Need for government regulation

Government regulation may be necessary because voluntary industry initiatives appear to have been ineffective to date at deterring unreasonable conduct across the industry.

In December 2015, the voluntary industry 'Code of Practice for Parking Enforcement on Private Land' (the Code) came into effect. Our assessment is that the Code has not been sufficiently effective in changing behaviour across the industry because: not all players have signed up; there is lack of robust mechanisms to provide strong enforcement; and there are continuing complaints about private parking enforcement.

We understand that there continue to be complaints about Code signatories. For example, Wilson Parking (a signatory) was the ninth most complained about trader to the Commerce Commission for complaints related to the Fair Trading Act in 2016/2017. Therefore there appear to be issues with both the conduct of those who are signed up to the Code, and with those who are not signed up to the Code. We acknowledge that wheel clamping regulation will only address the latter.

While it may be a small percentage of the market engaging in the conduct that wheel clamping regulation seeks to address, it may require government intervention because it is not entirely clear that this conduct is against the law, and therefore we cannot conclude that it is merely a lack of compliance in some parts of the industry that is the issue.

The Code does not provide guidelines for setting parking enforcement fees, which we understand are a major source of complaint. There is a potential risk that private companies agreeing to a maximum fee or other fee constraints might be considered price-fixing. As such, it may be difficult for private companies to agree to collectively address concerns around unreasonable fees without government intervention.

Problems are likely to continue

We think there continue to be market incentives for some operators to engage in practices which may be harmful to motorists. Concerns have been expressed that clamping is more lucrative than enforcement methods such as issuing breach notices and that some operators are dependent on clamping for revenue. Given that it is potentially more lucrative as an enforcement method, costs associated with clamping may reduce costs for property owners to enforce their property rights i.e. the costs of enforcement fall on the motorist, not the property owner. Property owners are likely to continue to have incentives to employ parking enforcement operators who use wheel clamping as a method.

The underlying cause of the problem appears to be that wheel clamping is a cheaper mechanism to deal with parking on private land than the alternatives of issuing a breach notice or having the vehicle towed. This has attracted unscrupulous operators into the market, leading to the problems identified above. Without government regulation, we expect these practices to continue.

2.2 Who is affected and how?

The proposals seek to change the behaviour of private parking operators involved in wheel clamping. This may include situations where:

- car parking businesses provide parking services to the general public for a cost
- car parks are made available to the public that do not involve a charge for parking but may be available to customers only and/or subject to a time limit (e.g. shopping centre carparks)
- car parks are located on private land where there is no intention to provide parking for the public (e.g. a staff car park).

The proposed interventions seek to change the behaviour of wheel clamping operators as well as owners of private parking who carry out clamping themselves or who contract to clampers.

We do not expect regulated parties to be in favour of the proposed regulation.

Consumer advocacy and motorist advocacy groups (such as Consumer NZ and the AA) are supportive of some form of regulation of wheel clamp operators. They are concerned with consumer/motorist rights when faced with unreasonable wheel clamping practices.

2.3 Are there any constraints on the scope for decision making?

Ministers have committed to addressing the problems related to parking enforcement on private land by regulating wheel clamping practices.

Section 3: Options identification

3.1 What options have been considered?

A range of options has been considered to address the problem. These have been assessed according to the criteria of effectiveness, cost, and speed of implementation. The options considered are listed below.

Option 1: Strengthen enforcement of the voluntary Code

As the existing Code is non-binding on signatories, there are currently limited means of enforcing it and penalising breaches. This option would make the Code binding on signatories and establish an independent parking disputes adjudicator responsible for hearing complaints and facilitating dispute resolution. The adjudicator would be funded by, and manage complaints about, signatories to the Code.

Pros	Cons
This option is unlikely to add significant ongoing costs for the regulator or government more widely because it would be largely an industry-led approach.	This would involve significant costs to the parts of the industry who are signatories. The level of costs could discourage the industry from becoming signatories.
This could provide a cost-effective means of improving access to justice. For example, if an adjudicator is free to motorists, it will allow them to avoid the $45 fee associated with Disputes Tribunal cases, which may in practice act as a barrier to pursuing claims (although motorists would likely incur the costs of this new scheme by other means, such as in higher parking charges).	This option would not address problems relating to wheel clamping, which we understand is where many of the problems lie. This is because it would only improve compliance in cases involving Code signatories. In practice it would not effect substantial change given that many complaints are related to companies that carry out wheel clamping, who are not signatories. There is no non-regulatory mechanism to compel members of the industry to belong to the Code.
	We would expect industry costs to be passed on to motorists in the form of higher parking enforcement fees.
	This would require regulatory change to establish an adjudication body.

Option 2: Require parking operators to disclose information

This option would involve regulations prescribing the disclosure of information to motorists. It could be used to require all companies that provide a parking service to provide certain information about their terms and conditions, and to prescribe the way in which the information must be disclosed to ensure that this it is visible and clear to motorists (for example, requiring that terms and conditions be displayed at the entry to a parking facility and that the size of the font be readable from a specified distance).

Pros	Cons
This option is consistent with an existing regulatory framework under the Fair Trading Act and does not require a change to primary legislation so it would be faster to implement than options which require a legislative amendment.	This option would only achieve greater compliance of all operators who are 'in trade' i.e. those who provide parking services. It would not address issues related to, for example, where public parking is not permitted in staff car parks. It is unlikely to remove unscrupulous wheel clamp operators from the market.
This option would slightly improve access to redress as motorists would have a clear path in the event of unclear or absent information.	This would have costs for the regulator and may require additional funding to monitor and enforce.
	There are costs for property owners associated with complying with new information disclosure requirements (i.e. changes to signage).
	This would not address issues unrelated to signage such as fees or unfair conduct.

Option 3: Caps on enforcement fees

One option is to regulate the maximum fees, or fee structure, that wheel clamp operators may charge to ensure that fees are proportionate to the breach and to the administrative costs of taking action against the breach.

This option would provide the ability to adjust the maximum fees in regulations. This would provide flexibility if the fees need to be updated, for example, to take into account the effect of inflation over time. The fees could be adjusted in future after a review. For example, the fees could be reviewed with consideration of household inflation using the consumer price index.

Pros	Cons
This would provide clarity to motorists and to operators about what fees are considered reasonable for the release of a clamped vehicle. It would make breaches of the fee cap easier for motorists to self-enforce, which is more appropriate for these lower value transactions and is less likely to need to be tested in a court or the Disputes Tribunal.	This would limit the revenue that wheel clampers can obtain. A risk is that the cap may be set below what operators need to recover costs, which may make wheel clamping unviable over time.
This will help to alleviate harm to motorists from excessive fees in relation to wheel clamping.	A potential risk is that a cap may be set above what some companies currently charge and these companies may raise their prices to meet the cap. We do not think this risk is high because unscrupulous operators appear to be maximising their profits already.

A cap may result in the exit of unscrupulous operators from the market if it makes clamping no longer a lucrative activity.	Fee regulation of wheel clamping might have an effect on other enforcement methods for which fees are not regulated e.g. this might drive up the use of towing and/or breach notices.
This would be lower cost to enforce compared to other regulatory options as it is relatively easy to prove a breach of a fee cap.	This would require an amendment to primary legislation and the making of regulations, which is a longer process than non-legislative options.

Option 4: Set comprehensive rules for wheel clamping

This option would introduce a comprehensive set of requirements of persons who undertake wheel clamping. Requirements could include:

a. licensing
b. identification and signage
c. limits to the circumstances in which a vehicle can be clamped
d. parameters around the ways in which payment can be recovered from motorists
e. an appeal process.

This could be implemented by prescribing a mandatory code, extending the scope of transport services licensing under the Land Transport Act, or creating a bespoke regime.

Pros	**Cons**
This would be a comprehensive response covering unclear signage and conduct issues related to wheel clamping.	This would have significant financial costs for government in the form of ongoing administrative and enforcement costs for the regulator.
This option would improve access to redress regarding a range of issues. This would reduce the financial and transaction costs for motorists to access redress compared to the status quo.	This would impose additional compliance costs for wheel clamp operators, which would be both upfront and ongoing. It would increase the cost of enforcing property rights, which may be passed on to property owners who purchase the services of wheel clamp operators.
	A comprehensive regime would take the longest to design and implement relative to other options.
	It would not address unreasonable fees.

Option 5: Ban wheel clamping

One option which is supported by Consumer NZ and the AA is an outright prohibition of wheel clamping as a parking enforcement method on private land.

Wheel clamping (and other means of immobilising vehicles such as towing) on private land has been banned in some international jurisdictions, including some Australian states and in

the United Kingdom in light of issues similar to those faced by New Zealand motorists.

Pros	**Cons**
It would be easier for motorists to access redress in relation to wheel clamping, as an outright ban would make it easier for motorists to point to and resolve illegal behaviour.	Banning clamping in isolation may lead to costs for motorists in the form of increased towing. In Queensland, where clamping is banned, complaints about unfair and misleading conduct in relation to towing companies have increased (although in New Zealand some regulation already applies to towing).
A ban would be easier to monitor and enforce compared to more prescriptive requirements, and would therefore impose lower costs on government.	This would constrain the methods property owners can use to enforce their rights. Costs are likely to increase for property owners, as breach notices and towing tend to be more costly enforcement mechanisms. Other enforcement mechanisms are not always suitable e.g. towing may not be suitable for tight spaces, while breach notices may rely on the presence of entry/exit barriers. This could lead to increased illegal parking. Banning may therefore reduce the efficiency and effectiveness of parking enforcement.
Banning wheel clamping would significantly reduce concerns about perceived unfair conduct related to clamping and disproportionate release fees.	This would require a legislative amendment so would be slower to come into effect.

3.2 Which of these options is the proposed approach?

Our preferred approach is to undertake consultation and research on the scale and nature of the problems related to wheel clamping before recommending a course of action. While there is anecdotal evidence of problems with wheel clamping, we are not satisfied that there is a convincing case for a particular change at this point in time.

However, in light of Ministers' direction that wheel clamping should be regulated, our preferred regulatory option is Option 3 (fee regulation).

Out of all the options, Option 3 may have the greatest impact in addressing the underlying cause of the problem (that clamping is a potentially lucrative activity that attracts unscrupulous operators into the market), without significant administrative cost. Other options may address problems to a greater extent but either have too high a cost for regulators (Option 4: Comprehensive regime) or too high a cost for the effective enforcement of property rights (Option 5: Banning wheel clamping).

Option 3 is likely to reduce complaints about disproportionate fees, and would provide greater clarity to motorists and to wheel clamp operators about what fees are reasonable. While it does not directly address concerns about unfair or intimidating behaviour, these concerns often relate to the conduct of wheel clamp operators in attempting to extract fees from motorists. Regulating fees could go some way to alleviating concerns if both parties have certainty about the legality of fees, as this may reduce the level of on-the-spot disputes between the parties.

The proposed approach is to cap the fee that can be charged for a parking breach that requires the removal of a clamp at $50. This amount is at the lower end of the range of fees currently charged for the release of clamped vehicles, but would likely be sufficient to deter parking breaches. It is at a relatively similar level to the fees commonly charged for breach notices. We acknowledge however that because of the limited evidence we hold, we cannot be certain of the impact that a $50 maximum will have. For example, we do not have sufficient evidence to assess whether the proposed maximum will impact cost recovery to the extent that it causes some operators to exit the market.

Why other options are not proposed

Option 1 (enforcement of the Code) is unlikely to have a significant net benefit to motorists beyond the status quo, largely because it relies on voluntary mechanisms and is very unlikely to target the wheel clamp operators whose conduct is the subject of consumer concern (none of whom are signatories to the Code).

While Option 2 (information disclosure) has benefits in terms of improving access to information for motorists, this only addresses one of the problems raised in relation to wheel clamping and would be unlikely to increase the compliance of rogue operators. As such we would be unlikely to recommend that Option 2 be implemented in isolation.

While Option 4 (a comprehensive regime) delivers significant benefits for motorists, it is also the most costly to implement. It would require significant additional resourcing in order to be implemented effectively and to produce the intended effects. While this option may best achieve outcomes for motorists in an ideal setting, our assumption underlying this analysis is that significant funding for additional enforcement resource is not available and this severely limits the attractiveness of this option.

Option 5 (banning wheel clamping) also delivers significant benefits for motorists compared to the status quo. We think that these benefits are likely to be outweighed by the costs to the

effective enforcement of property rights. Ultimately wheel clamping is a cheap way to enforce property rights, especially where other enforcement methods may not be suitable. Banning wheel clamping altogether may therefore not be an appropriate solution. We do not think that this option is suited to the type and scale of harm that is occurring. It might be justified if there was more evidence of widespread harm or if there were significant long-term impacts on the wellbeing of motorists from clamping.

We considered progressing a combination of Options 2 (information disclosure) and 3 (fee regulation). This could address the issues of unreasonable fees and unclear signage. We decided against this option because the two elements would not necessarily cover the same set of operators i.e. information disclosure would only apply to operators who provide a parking service in trade, while fee regulation would apply to all those who undertake wheel clamping. We think the latter approach is more likely to target rogue operators.

Government's expectations for the design of regulatory systems

The proposed approach has clear objectives and seeks to achieve those objectives with the least cost.

We note that fee regulation may be considered an unusual regulatory approach as it adversely impacts on market competition, property rights, and individual autonomy and responsibility. A fee cap will have limited flexibility to allow regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and to allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations.

The proposed approach will produce predictable and consistent outcomes for regulated parties across time and place. If the fee cap is set excessively high or low, there is a risk that this option will not be proportionate, fair and equitable in the way it treats regulated parties. We acknowledge that a one-size-fits-all fee cap may have different impacts depending on location. For example, a $50 fee cap might be reasonable in relation to a parking breach in central Auckland, but may be higher than necessary for parking in a provincial town, where hourly parking charges are likely to be significantly lower. However, given that the fee cap is likely to be enforced by a central agency rather than local authorities, different fee caps for different localities is likely to be overly complex for enforcement.

The proposed approach is consistent with relevant international standards and practices to maximise the benefits from trade and from cross border flows of people, capital and ideas (except when this would compromise important domestic objectives and values).

The proposed approach is generally well-aligned with existing requirements in related or supporting regulatory systems through minimising unintended gaps or overlaps and inconsistent or duplicative requirements.

The proposed approach conforms to established legal and constitutional principles and supports compliance with New Zealand's international and Treaty of Waitangi obligations. It will set out legal obligations and regulator expectations and practices in ways that are easy to find, easy to navigate, and clear and easy to understand. The preferred approach generally has scope to evolve in response to changing circumstances or new information on the regulatory system's performance.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties *(identify)*	**Comment**: nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Wheel clamp operators will have reduced income from clamping. Property owners may also suffer increased parking in breach of conditions if the maximum fee is below cost for some of them.	High
Regulators	The regulator will need to devote resources to monitoring and enforcement of maximum fees.	Low
Wider government	Potential enforcement required with impact on courts, although not expected to be significant.	Low
Other parties	Other users of parks may be unable to access parking if the wheel clamping activity no longer deters other users from parking in breach of restrictions.	Low
Total Monetised Cost		
Non-monetised costs		*Medium*
Expected benefits of proposed approach, compared to taking no action		
Regulated parties	"Good operators" may benefit from removal of unscrupulous operators from the market, resulting in greater social acceptance of wheel clamping.	Low
Regulators		
Wider government	Ongoing benefits of fewer complaints which require agency resources to respond to.	Low
Other parties	Reduced costs of being clamped.	High
Total Monetised Benefit		
Non-monetised benefits		*Medium*

4.2 What other impacts is this approach likely to have?

The amount of the fee cap has a significant impact on the outcome.

If the $50 fee cap is found to be too low, the regulation will become a de facto ban on wheel clamping, which could increase parking breaches and/or the use of other enforcement methods such as towing.

We do not think the $50 fee cap is likely to be too high. As such the cap is unlikely to be a target. However, there is a risk that the change could incentivise wheel clamp operators to target more motorists, to make up for the decreased return. We do not have sufficient evidence to assess whether the decreased return will cause more operators to exit the market or alternatively to increase the amount of clamping they undertake.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

We have engaged with consumer advocacy groups previously to understand their views and their preferred solution. The Automobile Association and Consumer NZ have previously supported banning wheel clamping, but are also likely to support the preferred approach, provided they are confident that the fee cap is set at an appropriate amount. They are likely to share MBIE's view of the problem and its causes. Specifically, they point to the lack of specific regulation of the industry as a contributor to the problem.

This issue is one which may affect many motorists. As such, the general public is likely to support the proposed approach.

Stakeholders who are unlikely to share our views are wheel clamp operators and many private land owners. We have not undertaken consultation with them in the time available.

Some parking enforcement operators are likely to share MBIE's views about the problem (e.g. those who have signed up to the voluntary Code).

We expect consultation will occur during the select committee process. We expect the views of various stakeholders to be drawn out at this time.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposed changes will be considered by Cabinet and will be given effect through an amendment to the Land Transport Act 1998.

Proposed changes will be communicated through public communications (e.g. Ministerial press release) and targeted communications to the industry. Promoting information about the rights of motorists will also be an important part of implementation as the effectiveness of the proposal relies to some extent on motorists knowing their rights. This is something MBIE will work on and engage with groups like the AA and Consumer NZ on.

The New Zealand Police is likely to be the enforcement agency under the Land Transport Act.

It is proposed that regulated parties have six months before the proposals come into force, to give them sufficient time to make necessary compliance changes.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The enforcement agency will collect new data on breaches of requirements. No single agency is currently responsible for this.

As much of the problem definition is based on anecdotal evidence, we would expect to see a decrease over time in media reports about the problems identified in this analysis.

Given that there is no one avenue for complaints currently, we will be unable to accurately quantify any reduction in the levels of complaint before and after the changes. However, we would expect to be able to monitor whether motorist and consumer advocacy organisations continue to receive regular complaints about the issues, through regular engagement with them.

7.2 When and how will the new arrangements be reviewed?

We have not proposed that a periodic review of the new arrangements will be required in the legislation.

A review will likely be triggered if monitoring data from the enforcement agency shows that the arrangements are having unintended, unforeseen consequences, or having the reverse effect from that intended. Regular engagement with stakeholders will provide an opportunity for them to raise any concerns with the new arrangements – both through the relationship between the regulator and regulated parties, and the regular relationships between government departments and consumer advocacy groups.

We envisage that maximum fees will be reviewed as necessary to ensure that they continue to be appropriate.