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Land Transport (Wheel Clamping) Amendment Bill

NZAA submission

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NEW ZEALAND

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REGARDING: **Land Transport (Wheel Clamping) Amendment Bill**
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NOTE TO REQUESTOR

The New Zealand Automobile Association would like the opportunity to present this submission orally.

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Background on the New Zealand Automobile Association

The New Zealand Automobile Association (NZAA) is an incorporated society with over 1.7 million Members. Originally founded in 1903 as an automobile users advocacy group today it represents the interests of road users who collectively pay over \$3 billion in taxes each year through fuel excise, road user charges, registration fees, ACC levies, and GST. The NZAA's advocacy and policy work mainly focuses on protecting the freedom of choice and rights of motorists, keeping the cost of motoring fair and reasonable, and enhancing the safety of all road users.

Executive Summary

The NZAA is supportive of the intent of this legislation. We welcome the move to impose a maximum penalty fee to be paid by a driver for the removal of an immobilising device. The use of immobilising devices, such as wheel clamps (and a windscreen-blocking device known as "the barnacle"), is unregulated, and the NZAA has long called for regulatory controls on this activity, so this Bill is a positive development. The NZAA would prefer this Bill to go further, especially by also regulating minimum signage standards for the operators of privately-owned public carparks.

However, the NZAA's main recommendations are that the proposed maximum penalty fee be revised down to \$50, and that the Bill imposes a 10-minute 'grace period' before any such penalty can be applied.

In the absence of mandatory signage requirements, the NZAA does not support the principle that the penalty fee should act as a deterrent to motorists. In our view this intent is misplaced as our evidence of parking enforcement disputes has identified that inadequate signage is a common cause of "unauthorised" parking. Therefore motorists are often not to blame and thus should not be unduly penalised as a result of property owners avoiding implementing adequate parking controls and signage and instead transferring the avoided costs onto motorists.

Introduction

Parking is a core element of motoring and mobility. All vehicle journeys begin and end with a stationary car park. Parking is critical to a functioning economy, facilitating the distribution of goods and services and facilitating access to employment, shopping, recreation and other essential activities.

For many motorists, parking fees are a significant variable cost of motoring, and some could spend more money on parking than on fuel per annum. For others, the cost of a single breach of parking rules can equate to a month's worth of fuel.

Therefore, concerns around the cost of parking and enforcement are issues for NZAA Members. Results from the NZAA's quarterly rolling surveys show 7.9% of Members have received a parking ticket in the last six months. Further, wheel clamping is particularly unpopular with NZAA Members – in a random survey, 86% of NZAA Members saw clamping as far too harsh a penalty for overstaying 20 minutes, and 66% saw clamping as far too harsh a penalty for using a private car park they are not allowed to use.

Everyone who uses a car engages with the privately-operated parking sector. For example, everyone who drives to a supermarket parks on private land. But how many customers know what the parking rules at the supermarket are? How long are you permitted to park there? Are you permitted to walk off-site to buy a coffee or goods at shops nearby in order to combine trips?

Privately-operated public parking also includes commercial parking buildings or precincts, shopping malls, and other open spaces adjacent to businesses or activities.

Virtually every other aspect of motoring is regulated to protect motorists' interests, with the notable exception of *private* parking:

- on-street (council) parking (penalties and signage)
- provision of the number of private carparks (via the Resource Management Act)
- driver licensing
- road rules
- fuel (fuel quality, retailing)
- tolls
- vehicle (licensing, Warrant of Fitness, emissions, noise, vehicle safety standards, car repairs, servicing, vehicle modifications)
- consumer (car finance, commercial sale of cars, advertising, rental agreements)
- even some bylaws about washing cars

We observe in the Regulatory Impact Statement on wheel clamping, that MBIE state that their analysis is largely anecdotal, and that there is no information on the number of operators who conduct wheel clamping. MBIE concludes that this is partly due to the fact that “there is no single regulatory agency responsible for dealing with wheel clamping”. This is also noted in the introduction to the Bill.

The NZAA concurs. Much of our own evidence is also anecdotal, derived from complaints from motorists about parking enforcement – including wheel clamping. We have also extensively analysed parking enforcement on private land in other jurisdictions, and have regularly engaged with the major private parking operators in New Zealand. This has enabled the NZAA to develop a policy on parking enforcement on private land.

Parking is the second most common complaint the NZAA receives from motorists (after fuel prices). The majority of complaints are in relation to parking enforcement on private land – i.e. privately-operated public parking, and many of these are about wheel clamping. Council-operated parking – which is regulated – is the subject of far fewer complaints.

Complaints about privately-operated parking have common themes:

- inadequate, unclear or absent signage which makes it difficult to understand the rules
- unfair penalties that are disproportionate to the ‘offence’
- inability to challenge a penalty (e.g. wheel clamp), or a biased appeal process

It is common for motorists to complain about the legitimacy of wheel clampers, many of whom are casually dressed in unmarked vehicles. Often, motorists who have been clamped will call the police, perceiving they have been the victim of ‘extortion’. Actual quotes from motorists to the NZAA include:

- *“Is this theft? I would argue if money is given under duress it is extortion.”*
- *“The most intimidating and frightening experience I have ever had.”*
- *“The most hideous experience of my life. I am too scared to drive to the city now to park.”*

Lack of regulation means the onus is on the driver to challenge clamping practices. Where a vehicle has been clamped, the only practical option is to pay the fee to get the car released. Drivers can attempt to challenge the fee later through the Disputes Tribunal, but the \$45 filing fee and time cost may act as a deterrent with no guarantee of a positive outcome, again because of the lack of regulations providing clear guidelines.

The lack of regulation of this aspect of motoring is incongruous and means that it is difficult to collect data. That makes it difficult to both monitor the private parking sector, and to develop policy interventions to correct any market failings. If the private parking sector (including enforcement) was regulated, then it would be possible to collect a whole range of data on the scale of the industry and costs. This Bill will only enable a small amount of data to be collected. The NZAA submits that more comprehensive regulation of the entire sector is still desirable.

The NZAA is supportive of this regulation. While the NZAA has long called for an effective ban on wheel clamping on commercial-sized premises, we have also said that, in the absence of a ban, we would support regulating private parking enforcement, and so we commend the introduction of this Bill.

Ideally, the NZAA would prefer this Bill to be broader and include mandatory signage requirements, which we will briefly detail below, along with graduated penalties (both of which are mandated for council parking), and an independent appeals process. However, recognising that more detailed legislation would take longer to implement, our recommendations for amendments to this Bill will only focus on the content of the Bill.

NZAA submission

We comment on specific clauses in the Bill below:

A. Clause 98C(2)

1. The NZAA proposes that this clause should also include a “grace period” before which an operator can require a fee to be paid to remove an immobilising device. This is common practice with council enforcement, and indeed with some private parking operators (10 minutes is recommended in the voluntary Code of Practice for Parking Enforcement on Private Land¹, adopted by the major operators Secure Parking, Tournament Parking, and Wilson Parking). The NZAA would propose a grace period of 10 minutes, before any immobilising device can be applied, providing time for drivers to move their vehicle if they become aware that they are not authorised to park there.
2. Likewise, the NZAA would also support a 10 minute grace period at the end of a parking session, for private ‘pay and display’ car parks. We note that some councils optionally provide this now, and in the UK, the government introduced a new law to require councils to provide a 10 minute grace period *after* a parking ticket runs out. Councils are providing these grace periods because they recognise that peoples’ lives don’t always run to plan and they shouldn’t be punished for that, and the NZAA would support mandating this requirement for wheel clamp operators through this Bill.

B. Clause 98C(10)

3. In relation to the description for ‘prescribed amount’, which in the Bill is set at \$100, the NZAA submits that this prescribed penalty is too high.
4. We observe that the Minister of Commerce and Consumer Affairs Cabinet paper proposed that the maximum fee be set at \$50, including GST. The Cabinet paper suggested that this would be sufficient to “act as a deterrent for most parking breaches”. We agree.
5. It has been suggested that a proposed maximum fee of \$100 has been determined to provide a sufficient deterrent to motorists. Whilst currently typical wheel clamping fees are \$200 or more, \$100 is still a significant amount of money and in excess of both the typical fees charged by the major parking operators (\$65 for ‘breach notices’), and the regulated penalties for similar offences administered by councils under the Land Transport (Offences and Penalties) Regulations 1999.

¹ <https://www.aa.co.nz/drivers/speaking-up-for-drivers/parking-rules-fines-and-impoundment/parking/>

6. However, the NZAA disagrees with the principle that the wheel clamping penalty should act as a deterrent. In the NZAA's experience, on the basis of a large number of complaints reported to us from motorists, wheel clamping often results from a lack of clear or unambiguous signage explaining the rules of parking rather than deliberately choosing to ignore the rules. In these cases, a sufficient penalty to act as a deterrent is misplaced. As long as there is no requirement to regulate uniform signage for parking enforcement on private land, then motorists will continue to be confused about parking eligibility.
7. Invariably, wheel clamping takes place in open air carpark in shopping malls or business precincts to which the public have been invited to park, except there are (varying, inconsistent and often confusing) conditions on eligibility. In our view, because of the lack of clear signage or physical parking controls (to restrict access to eligible users only), it is unreasonable to penalise motorists for the failure by property owners or managers to invest in adequate signage or parking controls (such as gates or even simple chains to close off parking precincts when not in use after hours). Whilst these will cost the property owners, currently the failure to invest in adequate signage and parking controls is simply transferring costs onto motorists in the form of parking penalties. If the nature of the parking precinct or customers make it challenging to install parking controls (such as free parking at supermarkets), then the property owners are accepting a compromised parking management system which will inherently involve a level of non-compliance which they must also accept.
8. The NZAA does not support a maximum clamping fee of \$100 nor the principle that it should act as a deterrent unless this Bill was broader and also imposed a requirement for any parking precincts that undertake enforcement to also install a minimum standard of signage. In the absence of this, the NZAA recommends that the maximum penalty prescribed in this Bill be set at \$50, as was originally recommended by the Minister of Commerce and Consumer Affairs.
9. We accept that there will always be some motorists who knowingly choose to park where they are not entitled to do so. A penalty of \$50 will still act as a deterrent for these motorists, whilst not unduly penalising those motorist who have made a genuine mistake as a result of inadequate or unclear signage.