

Proactive Release

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Listed below are the most commonly used grounds from the OIA.

N/A - Document released in full. No information has been withheld for this proactive release

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

Regulatory Impact Statement: Powers, offences and penalties to address anti-social road users

Coversheet

Purpose of Document	
Decision sought:	Analysis produced to inform Ministers' final policy decisions on improving the offences and penalties relating to anti-social road users
Advising agencies:	Ministry of Transport
Proposing Ministers:	Minister of Transport, Hon Chris Bishop Minister of Police, Hon Mark Mitchell
Date finalised:	26/11/2024
Problem Definition	
<p>Gatherings of vehicles for unlawful and anti-social activities like street racing, dirt bike rallies, intimidating convoys and siren battles are increasing, and negatively affect road and community safety in New Zealand.</p> <p>The Ministers of Transport and Police are concerned that Police does not have sufficient powers to respond to these anti-social events, and that penalties need to be stronger to better deter offending and support public confidence.</p>	
Executive Summary	
<p>To respond to these concerns, Ministers have instructed officials to:</p> <ul style="list-style-type: none">• create a presumptive sentence of vehicle destruction or forfeiture for vehicles used in certain anti-social road user offences, and enable Police to seek approval from the courts to require vehicles to be impounded until an offender is convicted• give Police more effective powers to close roads or public areas to address public disorder or safety risks, and to issue penalties to those who refuse to remove their vehicles from these areas• target excessive noise from or within a vehicle by increasing the infringement fee• enable the use of noise cameras to issue infringement fees• compel the owners of vehicles used to flee Police to identify the driver or face a presumptive sentence of vehicle destruction or forfeiture. <p>With careful implementation, the above powers could reduce offending, improve safety, and increase public confidence in the justice system. However, the overall benefits and costs of this proposal will depend on difficult-to-predict factors. These factors include implementation and enforcement issues, and the extent to which new offences and penalties change behaviour. There will be implementation costs. While some storage costs may be recovered from offenders through fines (or through the sale of forfeited vehicles), they will otherwise fall to the Crown.</p>	

Limitations and Constraints on Analysis

The Ministers of Transport and Police directed officials to develop legislative proposals for stronger penalties for anti-social drivers by the end of 2024. The options considered are the status quo and Ministers' preferred options, with some variations to aspects of the preferred option to align with standard principles of criminal procedure and rights protected under NZBORA. The analysis has significant limitations:

- we have not consulted the public, although the Automobile Association recently expressed support for impoundment over destruction of vehicles
- we have not consulted with towage and storage providers (who will play an important operational role)
- we have limited data on the frequency and trends of intimidating convoys
- cost predictions (eg, impact of the proposals on court costs, towage and storage costs, and the wider Justice system) are based on multiple assumptions, including frequency of impoundment decisions by Police, application of penalties by the courts, and the ability of offenders to pay.

Responsible Manager(s) (completed by relevant manager)

Paul O'Connell
Deputy Chief Executive
Sector Strategy
Ministry of Transport
22 November 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Transport
Panel Assessment & Comment:	<p>A quality assurance panel with members from the Ministry of Transport has considered the attached Regulatory Impact Statement and concluded, in the light of identified limitations, that it "partially meets" quality assurance criteria.</p> <p>Ministers have instructed officials to consider a limited set of policy options. Within the scope of these directions, the panel considers that the Ministers' objectives and assessment criteria have been considered and applied. Where appropriate and feasible, use has been made of available evidence to make a logical case based on common assumptions. Likely implications have been noted, including the legal risks associated with some proposals.</p>

Section 1: Diagnosing the policy problem

What are anti-social road user events?

1. This Regulatory Impact Statement (RIS) covers five related activities (collectively, anti-social road use or ASRU), outlined below. The table includes our best estimate of the scale and effects of these offences.

Activity	Description	Scale	Effects
Illegal street racing	<p>Involves groups of vehicles engaging in unauthorised racing on public roads.</p> <p>Common characteristics:</p> <ul style="list-style-type: none"> participants commit a range of driving offences (eg, speeding, burnouts, excessive acceleration) pre-planning different locations over the course of the event. 	<p>From 1 July 2019 to 30 June 2024 the Police Emergency Communications Centres (ECC) received 65,738 calls about illegal street racing.</p> <p>The number of people charged with unauthorised street racing has decreased over the past 10 years, from 1,324 in 2013 to 1,020 in 2023. However, there has been a 34 percent increase in the number charged since 2019.</p> <p>Events can attract high numbers of vehicles (averaging 50 participating vehicles, with 100 to 1,000 spectators).</p>	<ul style="list-style-type: none"> High speeds and reckless behaviour pose serious risks to other road users. Events often damage roads and public spaces. Groups often block off public roads. Can escalate to other criminal offences (eg, assault).¹
Dirt bike gatherings	<p>Involves groups of people riding dirt bikes in public spaces where the vehicles are prohibited (eg, public parks, schools). Participants rely on supporters to provide fuel and record the events.</p>	<p>From 1 July 2019 to 30 June 2024, ECC received 25,230 calls about dirt bike gatherings. Most of the call volume has occurred over the past three years, with between 6,000 and 9,000 calls per year compared with under 1,000 per year in the previous two years.²</p>	<ul style="list-style-type: none"> High speeds and reckless behaviour pose serious risks to other road users. Groups can often block off public roads, including intersections.
Intimidating convoys	<p>Involves groups of motor vehicles driving together, with one or more driving dangerously or recklessly. Their behaviour may be intentionally intimidating to other road users. Often associated with gang member gatherings.</p>	<p>Police reports the events are not frequent but are serious.³</p>	<ul style="list-style-type: none"> High speeds and reckless behaviour pose serious risks to other road users. Events often damage roads and public spaces. Groups often block off public roads. Can escalate to other criminal offences (eg, assault).
Siren battles	<p>Involves groups of people competing to make as much noise as possible using</p>	<p>Police does not hold specific data on siren battles, however, the number of people charged</p>	<ul style="list-style-type: none"> Noise disturbance for communities, especially late at night.

¹ For example, Waikato District reported an instance where a large group blocked an intersection, and a member of the public was caught in the process. When the member of the public tried to move their vehicle, it was severely damaged, and he was assaulted. The victim's car was then stolen by the group engaging in ASRU activity.

² Counties Manukau accounted for most dirt bike related calls (25% of the total) compared with the next highest district, Bay of Plenty, which accounted for 14% of the total.

³ For example, the violent assault of a motorist on the Waikato Expressway received significant media attention. Three members of the Tribesmen were arrested and charged with wounding with intent to cause grievous bodily harm.

Activity	Description	Scale	Effects
	vehicle-mounted sirens or other sound systems.	with having noisy equipment in a vehicle has increased from 38 in 2013 to 59 in 2023.	
Fleeing drivers	Involves drivers attempting to evade Police, at high speeds, after being required to stop. Drivers frequently flee from the events outlined above. Most fleeing drivers are either disqualified or unlicensed. ⁴	Police reports an increase in fleeing driver events in the period 1 July 2019 to 30 June 2024. Between July 2023 and June 2024 there were 9,517 events reported to ECC. ⁵ The number of people charged with fleeing driver offences has steadily increased over time, from 1,546 in 2013 to 3,016 in 2023.	<ul style="list-style-type: none"> Police reports 2 or 3 deaths, and 400 to 600 crashes caused by fleeing drivers each year between 2020 and 2022.⁶

⁴ [Fleeing Drivers in New Zealand - IPCA](#)

⁵ There is variability across districts with four districts each accounting for 12% (ie, Canterbury, Bay of Plenty, Central and Counties Manukau).

⁶ [Road traffic injury mortality - ehinz.ac.nz](#)

The events are evolving and increasingly difficult to police

2. Police has a range of powers under the Land Transport Act, Land Transport (Offences and Penalties) Regulations and the Policing Act to respond to ASRU. These include powers to impound vehicles for 28 days (for reckless driving) or six months (for fleeing drivers), issue infringements (for excessive noise), and close roads.⁷ These existing offences are summarised in more detail in the Annex.
3. However, Police faces significant challenges in utilising these enforcement tools in a timely and effective way. These challenges are the core of the problem.

Large numbers of participants and attendees mean Police cannot always intervene immediately or effectively

4. Police may struggle to intervene in large events due to safety concerns (risk of violence towards officers from attendees), resource constraints (insufficient officers to handle/manage up to 1,000 attendees), or logistics (eg, blocked roads).
5. Intervening during a convoy can be especially risky. These events involve multiple vehicles that are speeding or driving recklessly, and intervening can cause risks to other road users.
6. When Police cannot shut these events down in a timely manner, the likelihood of injury to communities, participants, Police, and/or damage to property increases.

There are challenges with charging offenders after the event

7. When Police cannot intervene effectively during an event, enforcement must happen later. This often requires significant resource and evidence-gathering (eg, capturing and reviewing video footage from drones).
8. Police often struggles to successfully identify and prosecute drivers because:
 - drivers may not be identifiable in evidence (eg, due to helmets and face coverings)
 - participants flee, either when the officers arrive at the event or on receiving information that Police plan to intervene
 - participants and attendees are increasingly using technology (eg, social media) to share information and evade Police operations
 - it is challenging to accurately identify offenders among large groups of people who may not all be offending.
9. Police can seize vehicles after events to support their inquiries, but if the offender is unidentifiable and cannot be charged, they must return the vehicle. A summary of the current offences and penalties is in the Annex.
10. When Police is unable to break up large groups, and/or unable to identify and penalise those involved, it diminishes the timeliness and certainty of punishment. This can result in reoffending and emboldened supporters.

What is the policy problem or opportunity?

11. For the reasons set out above, Ministers are concerned that Police does not have sufficient powers to respond to anti-social road user events, and that the available penalties are insufficient to deter offending, improve road and community safety, and help prevent reoffending.

⁷ Courts may also issue fines, suspend licences, imprison offenders and confiscate and/or order forfeiture of vehicles. On the third conviction for illegal street racing, courts may order the destruction of a vehicle.

12. Reforming the fleeing driver laws is also included in the coalition agreement between the National Party and the New Zealand First party.

What objectives are sought in relation to the policy problem?

13. The objective is to reduce offending and the harm it causes (eg, to community safety, property and amenity damage), through:
- providing Police with a range of tools to respond to anti-social road users and events both during and after the offence
 - creating a stronger deterrent for offending by increasing the likelihood that a strong penalty will be applied
 - preventing vehicles from being used in multiple offences.

Section 2: Deciding on an option to address the policy problem

What criteria will be used to compare options to the status quo?

14. The following criteria will be used to analyse each proposal:
- **Effectiveness:** how effective will an option be in responding and preventing ASRU? This criterion considers whether the option prevents or disrupts behaviour that is harmful to the public, their sense of safety and their ability to go about their communities without disruption, and confidence that law and order will be maintained.
 - **Cost efficiency:** how much will an option cost the Crown to implement and run? These costs will in part be subject to the actual use of the new powers and the ability of offenders to pay court fines, which are difficult to predict.
 - **Proportionality:** does the option impose a penalty that is proportionate to the policy objective (eg, responding and preventing ASRU) and the nature of a person's conduct? Is the option otherwise consistent with standard principles of criminal procedure and rights protected under NZBORA?

What is the scope of options being considered?

15. Ministers determined the scope as: create new offences to criminalise certain behaviours, create new or strengthened penalties, and broaden Police powers.

What options are being considered?

Option one – status quo

16. If no change is made, Police can manage ASRU through existing offences and penalties. However, the challenges identified above will hinder the ability to prevent and respond to ASRU. There would be little deterrent for people to undertake ASRU and Police will lack effective tools to monitor and enforce the law and prevent reoffending. There will be continued safety risks and harm to communities.

Option two – more tools for deterring and penalising anti-social road users

17. Option 2 provides a package of stronger offences and penalties for ASRU-related activities to support enforcement, deter offending and enhance community safety. Within each proposal there is a range of variations as set out below. Options and the variations are not always mutually exclusive.

Options analysis

Proposal 1: Greater use of vehicle destruction and forfeiture

18. This option expands the offences that are subject to a presumptive sentence of vehicle destruction or forfeiture, except where it would:
- cause extreme hardship to the offender, or
 - cause undue hardship to any other person.
19. Three variations of this option are analysed:
- 1A: Vehicle destruction or forfeiture is a presumptive sentence for serious ASRU convictions – that is, all ASRU convictions except those where there is no speeding or dangerous driving involved (which would remain subject to a \$10,000 fine or six months impoundment),
 - 1B: Vehicle destruction or forfeiture is a presumptive sentence for all ASRU convictions no matter their seriousness, and/or
 - 1C: Before a *defendant* is convicted of an ASRU offence, Police may apply to the Court for an order that the vehicle be destroyed or forfeit. The Court must grant the order unless it would cause extreme hardship to the defendant or undue hardship to any other person (ie, the owner of the vehicle if they are different to the defendant).
20. Upon conviction, the offender would be liable for the cost of destruction. A court would generate a fine to cover this cost. If not paid, a court can seize an offender's assets and/or deduct from wages.

	1A: Vehicle destruction or forfeiture is a presumptive sentence for serious ASRU convictions	1B Vehicle destruction or forfeiture is a presumptive sentence for all ASRU convictions no matter their seriousness	1C: Pre-conviction destruction or forfeiture
Effectiveness	Positive This new presumptive sentence means offenders' vehicles are likely to be destroyed or forfeited. This is likely to have a deterrent effect while preventing the same vehicle being used for further offending.	Positive As for 1A, but slightly stronger effect as the new presumptive sentence applies to a wider range of offences.	Strongly positive This option applies a penalty swiftly, which is likely to have a strong deterrent effect. Theory supports the idea that penalties which emphasise

	1A: Vehicle destruction or forfeiture is a presumptive sentence for serious ASRU convictions	1B Vehicle destruction or forfeiture is a presumptive sentence for all ASRU convictions no matter their seriousness	1C: Pre-conviction destruction or forfeiture
			loss (of a licence/vehicle) could be effective at changing behaviour. ⁸
Costs	Moderately negative There is moderate risk that costs would fall to the Crown if they cannot be recovered from the offender.	Negative As for 1A, but the quantum of costs borne by the Crown could be slightly higher as more offenders will be sentenced and thus more may be unable to pay costs.	Strongly negative As for 1B, but the Crown could face much higher costs if a defendant is found not guilty and the Crown found liable for compensation for the destroyed vehicle.
Proportionality	Positive Relative to the status quo, this option ensures relatively serious criminal penalties can be imposed for serious criminal offending following conviction. It is thus generally proportionate and consistent with the NZBORA's protections around rights to natural justice and its minimum standards of criminal procedure. Proportionality is further ensured by providing for judicial discretion and flexibility about whether to impose a forfeiture or destruction order for hardship reasons or whether it would be manifestly unjust.	Neutral By applying a new and relatively serious criminal penalty to some less serious offending, this option could be seen as disproportionate in those cases. However, this option mitigates the risk by providing for judicial discretion on whether applying the penalty will cause undue or extreme hardship or be manifestly unjust.	Negative This option empowers Police to impose a relatively serious and irreversible punitive penalty on a person, with little judicial discretion before they are convicted of an offence. There are more proportionate options available to realise the policy objective, such as impoundment.

Proposal 2: Greater use of impoundment or alternatives

21. This option expands the scenarios where Police can impound a vehicle following the commission of an offence. These proposals expand the ability for Police to impound a vehicle (pre-conviction) to offences related to fleeing drivers, illegal street races, or intimidating convoys. Upon conviction, the offender would be liable for the cost of the impoundment. A court would generate a fine to cover this cost. If not paid, a court can seize an offender's assets and/or deduct from wages.
22. Four options were considered:

⁸ Evidence Based Policing Centre, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020) p.16. See also Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291.

- 2A: Police can impound the relevant vehicle for 28 days, with an option to apply to the Court to extend this where Police believe the vehicle will be used for further offences
- 2B: Police can impound the vehicle until the court reaches a verdict on the substantive offence
- 2C: Police have greater flexibility to impound a defendant's vehicle in a variety of lower-cost ways (such as clamped at the defendant's residence or digitally via GPS monitoring)
- 2D: Police can suspend a driver's licence as an alternative to impounding the relevant vehicle.

	2A: 28-day impoundment, with ability to apply to extend	2B: Impoundment until verdict	2C: Lower-cost impoundment	2D: Licence suspensions
<i>Effectiveness</i>	<p>Positive</p> <p>Removing vehicles during or after the event would reduce the likelihood of reoffending and provide immediate safety benefits through vehicles being removed from the roads. The timelier penalty (impoundment) may strengthen the deterrent effect and improve public confidence in law enforcement.</p>	<p>Strongly positive</p> <p>As for 2A but stronger effects as the penalty is longer.</p>	<p>Positive</p> <p>As for 2A. There is a marginal risk that offenders remove clamp, sticker, or GPS monitoring that could compromise safety.</p>	<p>Positive</p> <p>Relative to the status quo, public safety will be improved as the offender will not be able to reoffend. In theory the impact on public safety will be greater than 2B but it is unlikely there will be 100% compliance as the defendant will still have access to their vehicle.</p>
<i>Costs</i>	<p>Moderately negative</p> <p>The risk that costs fall to the Crown will increase in proportion to the number of additional impoundments (assuming a constant rate of offenders being unable to pay their fines or found not guilty).</p>	<p>Negative</p> <p>As for 2A, but the cost would be higher overall as the impoundment will be longer, increasing storage costs.</p>	<p>Moderately negative</p> <p>Relative to the status quo, costs to the Crown would increase but would be minimised by adopting a lower-cost version of impoundment (ie, there would be no storage costs). As such there would be a lower risk that the sale of the offender's assets would be insufficient to cover the cost of impoundment, and a lower likelihood that costs would fall to the Crown.</p>	<p>Neutral.</p> <p>This option has very little cost to the Crown beyond minor administrative costs.</p>
<i>Proportionality</i>	<p>Neutral / Moderately negative</p> <p>While difficult to predict, this option's impact on safety may be disproportionate to the negative practical impact on the defendant (such as inability to get to work) and rights such as natural justice. However, negative impacts are mitigated by limiting impoundment for 28 days, subject to judicial discretion to extend only if the likelihood of reoffending is high.</p>	<p>Negative</p> <p>As for 2A but the new adverse consequences on the defendant are increased irrespective of their risk of reoffending.</p>		<p>Negative</p> <p>As for 2B but negative impacts are greater as a licence suspension has more negative effects on the defendant as they cannot drive at all.</p>

Proposal 3: Create a new offence for being part of an intimidating vehicle convoy

23. This option creates a new offence for people participating in an intimidating convoy. There are two options relating to the penalty:
- 3A: Vehicle destruction or forfeiture as the presumptive sentence
 - 3B: As for 3A but before a defendant is convicted of a convoy offence the Police may apply to the Court for an order that the vehicle be destroyed or forfeit. The Court must grant the order unless it would cause extreme hardship to the defendant or undue hardship to any other person (ie, the owner of the vehicle if they are different to the defendant).
24. Upon conviction, the offender would be liable for the cost of destruction. A court would generate a fine to cover this cost. If not paid, a court can seize an offender's assets and/or deduct from wages.
25. Either of these options could be combined with any of the options for impoundment or suspension as noted in proposal 2. They are not factored into the analysis below.

	3A: New offence, with presumption of destruction or forfeiture	3B: As for 3A plus pre-conviction destruction or forfeiture
<i>Effectiveness</i>	Positive This new offence and presumptive sentence mean those participating in intimidating convoys face consequences for their actions. This is likely to have a deterrent effect while preventing the same vehicle being used for further offending which will increase safety.	Strongly positive As for 3A, but there would be immediate consequences for the offender and the relevant vehicle would be taken off the streets. All else equal this would increase public safety relative to the status quo and more so than option 3A.
<i>Costs</i>	Neutral There is moderate risk that costs would fall to the Crown if they cannot be recovered from the offender.	Negative As for 3A, but the Crown could face much higher costs if a defendant is found not guilty and the Crown found liable for compensation for the destroyed vehicle.
<i>Proportionality</i>	Positive Relative to the status quo, this option ensures relatively serious criminal penalties can be imposed for serious criminal offending following conviction. Proportionality is ensured further by providing for judicial discretion and flexibility about whether to impose a forfeiture or destruction order for hardship reasons or whether it would be manifestly unjust.	Negative This option empowers Police to impose a relatively serious and irreversible punitive penalty on a person, with little judicial discretion to ensure proportionality before they are convicted of an offence. While this would achieve the policy objective of keeping people safe and preventing reoffending, there are more proportionate options available to realise the policy objective, such as impoundment. Further, this option could result in the destruction of an innocent party's property which is inconsistent with several NZBORA principles.

Proposal 4: Expanded power for Police to temporarily close roads in cases of disorder or public danger and introduce a new penalty for failing to leave a closed road when requested

26. Police's current power to temporarily close roads would be expanded to include cases where there is existing or imminent public disorder or danger to the public. Police would be able to:

- close all publicly accessible areas (eg, parks, reserves, carparks) to traffic
- direct persons to leave or not to enter a closed area
- charge those who fail to comply with this direction without reasonable excuse.

27. Failing to leave a closed road could come with an infringement fee of either:

- 4A: \$300
- 4B \$1,000.

	4A: Expanded power to close roads with \$300 penalty	4B: Expanded power to close roads with \$1,000 penalty
<i>Effectiveness</i>	<p>Positive</p> <p>This option ensures Police have powers to shut down unsafe events, that will support public safety.</p>	<p>Positive</p> <p>As for 4A, with the larger penalty potentially having a stronger deterrent effect at the margins, although the extent to which the difference changes behaviour is probably likely to be small.</p>
<i>Costs</i>	<p>Neutral</p> <p>Police would likely already attend such disorderly events. Costs may reduce at the margins as the Police have more effective enforcement tools enabling them to shut down events more quickly.</p>	<p>Neutral</p> <p>As for 4A.</p>
<i>Proportionality</i>	<p>Neutral</p> <p>This option may infringe on innocent parties' liberty of movement, which is protected by NZBORA. However, the new power and infringement fee is appropriately limited and reasonable considering the significant risk to the public.</p>	<p>Moderately negative</p> <p>As for 4A, except the higher penalty is inconsistent with offences of a similar nature and may thus be deemed disproportionate to the nature of the offending.</p>

Proposal 5: Stronger penalties for and greater powers to detect excessive noise within or on a motor vehicle

28. This option would enable the future use of noise cameras (when the technology becomes available) and the infringement penalty for making excessive noise within or on a vehicle would increase from \$50 to:
- (5A) \$300, or
 - (5B) \$1000.

	5A: Enable future use of noise cameras, with \$300 fine	5B: Enable future use of noise cameras, with \$1,000 dollar fine
<i>Effectiveness</i>	Positive This option ensures Police has the powers to monitor and enforce noise-related offences. Increasing the fine from \$50 could have some deterrent effect although this will be difficult to predict.	Positive As for 5A, with the larger penalty potentially having a stronger deterrent effect at the margins, although the extent to which the difference changes behaviour is probably likely to be small.
<i>Costs</i>	Neutral This option would not be expected to increase enforcement costs in any material way.	Neutral As for 5A, however, the greater the fine, the greater the likelihood an offender may appeal, which could increase costs at the margins.
<i>Proportionality</i>	Neutral This option provides standard powers to monitor offending and raises the fine to be proportionate to the nature of the offending.	Moderately negative As for 4A, except the higher penalty is inconsistent with offences of a similar nature and may thus be deemed disproportionate to the nature of the offending.

Proposal 6: Stronger tools to manage vehicle owners who fail to provide relevant information

29. Currently, those who fail to provide Police with information relating to a fleeing driver can be charged and if convicted would pay a maximum fine of \$10,000, and Police may impound the vehicle for 28 days. Proposal 6 involves two options to expand and enhance these enforcement tools:
- 6A: Extend the offence to those who fail to provide information on similar offences to fleeing drivers – that is, a vehicle involved in street racing, loss of traction, and intimidating convoy; and/or
 - 6B: Provides for a stronger penalty for failing to provide information relevant to the offence (expanded as per 6A) by including a presumptive sentence of vehicle forfeiture or destruction.

	6A: Extend the offence for failing to provide information to new scenarios	6B: Failing to provide information has a presumptive sentence of destruction or forfeiture
<i>Effectiveness</i>	<p>Moderately positive</p> <p>This option ensures Police have the powers necessary to investigate and enforce criminal offending by ensuring those who hold relevant information have an incentive to provide it. By increasing the consequences, it may deter some vehicle owners from letting others use their car if they suspect it may be used for ASRU.</p>	<p>Positive</p> <p>As for 6A, but the stronger penalty can generally be expected to result in a stronger deterrent effect.</p>
<i>Costs</i>	<p>Moderately negative</p> <p>This would increase the number of offenders identified and prosecuted, and cars impounded. There is moderate risk that costs would fall to the Crown if they cannot be recovered from the offender.</p>	<p>Moderately negative</p> <p>As for 6A.</p>
<i>Proportionality</i>	<p>Moderately positive</p> <p>On balance, this option makes the criminal law more consistent than the status quo because it ensures similar offending is treated the same.</p>	<p>Moderately negative</p> <p>As for 4A, except the penalty is inconsistent with offences of a similar nature and may thus be deemed disproportionate to the nature of the offending.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

30. Of the two options, Option Two would likely better address the problem and the policy objectives. Within Option Two, the sub-options for each proposal that best meet the criteria are outlined in the table below.

Table 1: Sub options for each proposal that best meet the criteria

Proposals	Preferred	Rationale
Proposal 1: Greater use of vehicle destruction and forfeiture	1A Vehicle destruction or forfeiture is a presumptive sentence for serious ASRU convictions – that is, all ASRU convictions except those where there is no speeding or dangerous driving involved (which would remain subject to a \$10,000 fine or six months impoundment).	Lower costs. Forfeiture would have fewer costs to the Crown, as vehicles, while low value, would be able to be sold to recover some costs. Proposal 1A would ensure low level offenders are treated less harshly than more serious offenders, increasing proportionality.
<p><u>Constraints:</u> Potential for Police incurring costs for cases that are dismissed may inhibit full use of the powers. Courts may also consider forfeiture/destruction a sufficient penalty and may use their discretion to waive impoundment costs or fines. This could reduce the effectiveness of the policy. It would also place liability for impoundment costs on the courts.</p>		
Proposal 2: Greater use of impoundment (or alternatives)	2A: 28-day impoundment with option to seek court order to extend.	Judicial discretion to extend impoundment past 28 days is consistent with natural justice rights, while impounding only high-risk vehicles would decrease costs to the Crown. Impoundment at an offender's residence has significant workability issues, while licence suspension could be considered more disproportionate and read down by courts.
<p><u>Constraints:</u> Potential for Police incurring costs for cases that are dismissed may inhibit full use of the powers. The towage and storage sector has previously raised concerns about financial losses arising from Police impoundment. Impounded vehicles are often low value and are frequently abandoned by owners, or the owners refuse to pay for them, resulting in financial losses for operators. Abandonment rates prior to the recent six-month impoundment laws ranged from 10 to 15 percent (about 2500 vehicles per year). Due to the constrained timeframes for these proposals, there has been no targeted consultation with the sector to verify its ability and willingness to participate in expanded impoundment.</p> <p>Anecdotally, operators are refusing Police impoundments due to the risk of vehicle owners not paying fees and abandoning vehicles especially where the total storage cost exceeds the vehicle's value. Operators raised concerns about these issues prior to the extension of impoundment periods for fleeing driver offences from 28 days to 6 months.⁹ Further</p>		

⁹ 1News "Towies raise cost concerns of impounding cars under new policy." (17 February 2024). <https://www.1news.co.nz/2024/02/17/towies-raise-cost-concerns-of-impounding-cars-under-new-policy/>

Proposals	Preferred	Rationale
increases in impoundment periods are, therefore, likely to attract interest and similar concerns.		
Proposal 3 Create a new offence for being part of an intimidating vehicle convoy	Preferred 3A: New intimidating convoy offence. Presumptive sentence of vehicle destruction or forfeiture unless driver was not the owner.	Lower costs. While option 3A could have a greater deterrent effect, there are more proportionate ways to largely achieve the policy objective in a less intrusive manner.
<u>Constraints:</u> Potential for Police incurring costs for cases that are dismissed may inhibit full use of the powers. Limits on the capacity of the towage and storage sector may apply.		
Proposal 4 Expanded power for Police to temporarily close roads in cases of disorder or public danger and associated penalty	Preferred: 4A: Power to close roads and infringe people who do not leave (\$300).	A \$300 fee is more proportionate to the harm than a \$1000 fee.
<u>Constraints:</u> None identified		
Proposal 5: Stronger penalties for and greater powers to detect excessive noise within or on a motor vehicle	Preferred: 5A: Enable noise cameras. Infringement fee for excessive noise (\$300).	A \$300 fee is more proportionate to the harm than a \$1000 fee. For comparison, \$1000 is \$370 more than the current fee for exceeding the speed limit by 45-50 km/hr.
<u>Constraints:</u> While the technology for noise cameras is not developed yet, there are no other constraints identified.		
Proposal 6: Stronger tools to manage vehicle owners who fail to provide relevant information	6A: Extend the offence for failing to provide information to new scenarios	This option achieves the policy objective in a more proportionate manner.
<u>Constraints:</u> Potential for Police incurring costs for cases that are dismissed may inhibit full use of the powers. Judges may also consider impoundment sufficient penalty and may use their discretion to waive impoundment costs or a fine. This could reduce the effectiveness of the policy.		

Other general constraints

31. All the proposals are likely to generate more appeals and/or more hearings, which could affect civil court proceedings' timeliness and/or draw court resources away from other areas. However, we expect that this would be a small impact overall.
32. Care would be needed when drafting the new offences to ensure the powers could only be used in the context for which they were designed (disrupting or reducing anti-social road user events). This would be required to avoid the use of these powers in other contexts such as political protests where the presence of vehicles may be incidental.

What are the marginal costs and benefits of the preferred option (Proposals 1A, 2A, 3A, 4A, 5A, 6A)?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Courts	<ul style="list-style-type: none"> Cost of storing and destroying vehicles. Court time for the increased number of people convicted for anti-social road user offences. Any impoundment/destruction costs that cannot be recovered as a fine (eg, not repayable within five years). 	<ul style="list-style-type: none"> Depending on the length of impoundment, net gain of \$2 million (28 days) to costs of \$20.3 million (16 months). These numbers assume a 90:10 vehicle forfeiture to destruction ratio and some recovery from the sale of vehicles. Recovery from fines is not included. 	All evidence is of low certainty (limited evidence, we have not consulted affected groups apart from Police and Ministry of Justice).
New Zealand Police	<ul style="list-style-type: none"> Initial cost of establishing the functions and operations, including training to use the new powers, ICT costs and new forms. Costs of vehicle storage and destruction. This will vary widely depending on the extent of enforcement acquittal rates in the courts. Without new funding or reprioritising other work, it will not be possible to implement longer impoundment periods. Costs are assumed to tail off after the 2028/9 financial year as the deterrent effect increases. 	<ul style="list-style-type: none"> Implementation costs of \$1.480 million. Depending on the length of impoundment, costs of \$0.706 million (28 days) to \$10.577 million (16 months). These numbers assume Police liability for costs where proceedings do not result in a conviction (30% of cases). 	The AA proactively submitted its views but were not consulted on specific proposals. A key driver of costs and impact will be the extent to which the powers are
New Zealand Transport Agency (NZTA)	<ul style="list-style-type: none"> Initial cost of setting up new agreements with third-party operators. Setting standards for operations and potential national contract for regulated operators. 	Low	
Third-party operators (ie, towage, storage and wreckage service providers)	<ul style="list-style-type: none"> Initial cost of setting up new agreements. Ongoing operation costs. Ongoing risk of limited capacity. Possible investment in vehicles and facilities for greater volume of vehicles. Safety risks for operators attending an event or post-event enforcement. 	<p>Unknown – we have not consulted operators about the proposals.</p> <p>We understand operators incur significant costs for unclaimed vehicles within the six-month impoundment system. The abandonment rate of vehicles is currently 10 – 15%.</p> <p>A recent survey of 8 members by the Motor Trade Association, which represents towage and</p>	

	<ul style="list-style-type: none"> These costs may be acceptable to operators if there is a Crown guarantee their costs will be met. 	storage operators, found that \$500,000 in towage and storage fees was owed across the operators, with one operator being owed as much as \$175,000.	used, and the extent to which they act as a deterrent, which is difficult to assess at this point.
Affected parties	<ul style="list-style-type: none"> The penalties could affect human rights and freedoms recognised and promoted in the NZBORA. The new penalties may create income stress and act as a pathway into the justice system. People who are less able to pay will likely face unpaid fees and escalation to the courts. The proposals will likely disproportionately affect Māori. For example, Māori made up about 50% of the people charged with fleeing Police in 2023, and so are likely to be disproportionately affected by the stronger powers. Many Māori live and work in areas that have limited public transport. The proposals could exacerbate this exclusion.¹⁰ Offenders are also disproportionately young males: nationally in 2023, about 36% of people charged with one of the offences covered in this paper were under 25, and 83% were male. 	Medium.	
Total monetised costs		\$0.186 million to \$32.357 million.	
Non-monetised costs		Medium.	
Additional benefits of the preferred option compared to taking no action			
Road controlling authorities	<ul style="list-style-type: none"> Reduced cost of repairs to roads and public property. 	Unknown – we have not consulted Road Controlling Authorities about the proposals.	All evidence is of low certainty (limited evidence, we have not consulted affected groups apart from the Ministry of Justice).
New Zealand Police	<ul style="list-style-type: none"> Improved identification of offenders after the offence. Decreased rates of offending, from deterrent effects. 	Low – Medium.	
Public	<ul style="list-style-type: none"> Improved sense of safety and confidence in the justice system. 	Low.	
Total benefits		Low – Medium.	

¹⁰ New Zealand Institute for Economic Research (NZIER). The driver licensing challenge: NZIER report to the Ministry of Business, Innovation and Employment (2016), (Wellington, New Zealand: NZIER, April 2016), 6-8

Section 3: Delivering an option

How will the new arrangements be implemented?

33. Police will provide further advice ahead of introduction on the required changes and their associated costs. Costs would likely need to be met within Police baselines, with associated trade-offs for other activity.

How will the new arrangements be monitored, evaluated, and reviewed?

34. The effectiveness of any amendments will be monitored by Police. Police will track:
- reductions in the number of fleeing driver and illegal street racing events and prosecutions
 - reductions in crashes, injuries and deaths from these events
 - the number of vehicle seizures and court-ordered destructions.
35. Monitoring this data will enable Police to understand whether the changes are having a deterrent effect.

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Annex: Summary of the existing penalties and proposed new penalties

Offence	Existing penalties (maximum)	Recommended alternative penalties (maximum)
Court ordered penalty for illegal street racing and fleeing driver*	Street racing: Courts may confiscate vehicle after first offence and destroy after third offence with exceptions for extreme hardship Fleeing driver: Courts can forfeit vehicle	1A: Court presumptive sentence of destruction or forfeiture with exceptions for extreme hardship to the offender and undue hardship to any other person. Retain existing penalties for the lower-level offence of failing to stop for Police but not also speeding or driving dangerously.
Impoundment penalty for illegal street race, fleeing driver, intimidating convoy	Illegal street racing and reckless driving: Police may impound vehicle for 28 days Fleeing driver: Police may impound vehicle for 6 months	2A: Police may impound vehicle for 28 days and may seek an extension from the court to impound the vehicle further where they believe it may be used again for another offence. There would be provisions to review or appeal a decision to extend impoundment.
Court-ordered penalty for convoy offence*	For reckless driving court may confiscate for first offence, must for second offence	3A: Presumptive sentence of destruction or forfeiture if driver is owner with exceptions for extreme hardship to the accused and undue hardship to any other person. If driver is not owner Court may issue a notice that the vehicle may be subject to confiscation if it is used again for offending
Police road closure	No current penalties	4A: \$300 infringement fee for failing to leave a road closed by Police. Court may issue fine of up to \$3000.
Excessive noise from within or on vehicle	\$50 infringement fee Court may issue fine	5A: \$300 infringement fee. Court may issue fine of up to \$3000.
Enabling noise cameras	Not currently available	5 A: Enable

Offence	Existing penalties (maximum)	Recommended alternative penalties (maximum)
Vehicle owner fails to provide information they have on driver*	For fleeing driver, courts may confiscate for first offence, must confiscate for 2 nd offence. Police may impound vehicle for 28 days.	6A: Courts may confiscate vehicle if owner is found not to have provided the information they know on the driver, with exceptions for extreme hardship to the accused and undue hardship to any other person, and a maximum fine of \$10,000. Police may impound vehicle for 28 days.

Financial, licence, and prison penalties for existing offences

Offence	Existing penalties
Illegal street racing (Sections 22A, 35, 36A, 96 Land Transport Act 1998 (LTA); Sections 128 and 129A Sentencing Act 2002 (SA))	Courts may confiscate vehicle owned by the offender or a substitute after first offence and destroy after third offence with exceptions for extreme hardship to the offender / substitute or undue hardship to any other person. Police may impound vehicle for 28 days Must disqualify for 6 months or more, or 1 year or more if caused injury or death Impose up to 3 months prison or a fine up to \$4,500 up to 5 years prison or a fine up to \$20,000 if caused injury, up to 10 years in prison or a fine up to \$20,000 if caused death
Fleeing driver (Sections 52A, 114 LTA; section 142AAB SA)	Courts can forfeit vehicle Police may impound vehicle for 6 months Fine of up to \$10,000 Must disqualify from driving for 6 months if also exceeding the speed limit or otherwise driving dangerously. Must disqualify for at between 1 and two years for 2 nd offence. Must disqualify for 2 years for 3 rd offence. Up to 3 months prison for 3 rd offence
Reckless/ dangerous driving, or careless driving causing injury or death (whether or not part of a convoy) (sections 7, 36 LTA)	For reckless driving court may confiscate for first offence, must for second offence For reckless driving Police may impound for 28 days Fine of \$4,500 fine, or \$20,000 if caused injury or death Must disqualify from driving for 6 months or more, 1 year if caused injury or death. After second offence must prevent offender from purchasing new vehicle for 12 months. 3 months prison, 5 years if caused injury, 10 years if caused death

Offence	Existing penalties
Vehicle owner fails to provide information they have on driver	<p>For fleeing driver courts may confiscate for first offence, must confiscate for 2nd offence</p> <p>For fleeing driver Police may impound vehicle for 28 days</p> <p>Court may issue \$20,000 fine</p> <p>Court must prevent offender from purchasing a new vehicle for 1 year</p>

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