

20 July 2022

OC220599

Hon Michael Wood
Minister of Transport

Action required by:
Tuesday, 26 July 2022

IMPROVING POLICE ENFORCEMENT POWERS TO DETER FLEEING DRIVERS

Purpose

Provide a Te Manatū Waka view on the New Zealand Police (Police) introductory briefing on legislative and operational responses to fleeing drivers and provide additional options for you to consider.

Key points

- Police have provided advice to their Minister that strongly recommends legislative responses to support effective identification and response to fleeing drivers. This advice did not include a Te Manatū Waka perspective.
- Stewardship of transport legislation is a key aspect of the Minister of Transport portfolio; this means that any proposed changes to the *Land Transport Act 1998* (LTA) are within your area of responsibility.
- Te Manatū Waka:
 - supports ensuring the Motor Vehicle Register can be used for identification of the registered person for a vehicle (commonly referred to as the 'owner'), but we believe this requirement already exists and only operational changes are required
 - supports aligning disqualification periods for failing to stop offence penalties with comparable high-risk driving offences, but recommends some changes to the proposals to ensure consistency with the current provisions and other transport penalties
 - supports the principle of aggravated failing to stop offences with more work required to identify appropriate aggravated offences and penalties
 - recommends some changes to the proposal for mandatory seizure and impoundment and potential forfeiture of vehicle where the owner prevents driver identification, including changing this to a discretionary power and limiting the penalty to 28-day impoundment only
 - does not support the proposals enabling the removal of vehicles for failing to stop offences and creating vehicle owner liability for failing to stop offences, as these proposals are likely to have significant equity and NZ Bill of Rights Act 1990 implications.

- We understand that you will be meeting with the Ministers of Police and Justice to discuss these proposals. The Minister of Police has been invited to report back to Cabinet, in consultation with you and the Minister of Justice, on any legislative proposals to address issues around fleeing drivers by September 2022.

Recommendations

We recommend you:

- 1 **note** that Cabinet has invited the Minister of Police, in consultation with the Minister of Justice and you, as the Minister of Transport, to report back to Cabinet by September 2022 on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264 refers].
- 2 **note** Te Manatū Waka will support the ongoing work with Police and Waka Kotahi to improve the data integrity and accuracy of the Motor Vehicle Register held by Waka Kotahi.
- 3 **agree** to discuss with the Ministers of Police and Justice the following modification to proposals for mandatory disqualification periods for fleeing driver offences.
 - First offence: six months or more, up to one year, if offence committed while speeding or driving dangerously. Yes / No
 - Second offence: one year or more, up to two years.
 - Third offence: two years.
- 4 **agree** in consultation with the Ministers of Police and Justice, to progress work on identifying possible new aggravated failing to stop offences and appropriate penalties, using the Effective Transport Financial Penalties Framework and Tool to assess the appropriate penalty levels. Yes / No
- 5 **agree** to discuss with the Ministers of Police and Justice the following modification to proposals for mandatory seizure and impoundment, and potential forfeiture, of vehicle, where the owner prevents driver identification. Yes / No
 - Discretionary impoundment of a vehicle for 28 days, where Police officers have reasonable belief that the registered person did not cooperate, or provided false or misleading information, in response to a request made under section 118 of the Land Transport Act 1998.

6 **indicate** if you would like to discuss with Officials s 9(2)(g)(i) [Redacted]
 [Redacted]
 [Redacted] Yes / No
 [Redacted]

Megan Moffet
Manager, Regulatory Policy
 20 / 07 / 2022

Hon Michael Wood
Minister of Transport
 / /

- Minister's office to complete:**
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Megan Moffet, Manager, Regulatory Policy	s 9(2)(a) [Redacted]	✓
Amber McGovern-Wilson, Principal Advisor, Regulatory Policy	s 9(2)(a) [Redacted]	
Vidhiya Damodaran, Senior Advisor, Mobility and Safety	s 9(2)(a) [Redacted]	

IMPROVING POLICE ENFORCEMENT POWERS TO DETER FLEEING DRIVERS

Ministers have expressed concerns the current fleeing driver penalties are insufficient

- 1 On 8 June 2022, the Cabinet Priorities Committee (CPC) discussed several initiatives to specifically respond to gang harm [CPC-22-MIN-0013 refers]. At CPC, Ministers expressed concerns that current fleeing driver penalties are insufficient, particularly in relation to disqualification periods for people who fail to stop for Police. In response, Officials were directed to provide further advice on strengthening current fleeing driver penalties.
- 2 On 4 July 2022, as part of package of proposals to address gang harm, further advice on fleeing drivers was provided to Cabinet. This included enforcement challenges Police is experiencing and possible legislative responses to strengthen penalties to deter offending, support identification of fleeing drivers, and improve enforceability of offences.
- 3 Cabinet has invited the Minister of Police, in consultation with the Minister of Justice and you, as the Minister of Transport, to report back to Cabinet by September 2022 on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264 refers].

Police are facing challenges in preventing and identifying fleeing drivers as their policy is to no longer pursue a fleeing driver

- 4 In December 2020, Police introduced a revised fleeing driver policy, which resulted in positive road safety outcomes with fewer and serious injuries relating to fleeing driver events. However, there are public perceptions that the policy changes have directly led to an increase in fleeing driver events and related crime and road safety risks.
- 5 Some offenders also think that there is little consequence for fleeing from Police. They might also think that penalties for fleeing are much lower than the penalty for other criminal activity that they will be caught for if they stop for Police.
- 6 As the revised policy is leading to fewer fleeing drivers being pursued, post-event investigations to identify the driver are essential to holding offenders to account. However, Police is encountering barriers to identifying and apprehending fleeing drivers. Since the revised policy came into effect, the proportion of offenders who were not identified has increased by 64 percent.
- 7 Police have advised that the main barriers they face in preventing and identifying fleeing drivers are:
 - 7.1 penalties for fleeing drivers are not known by offenders or seen as insignificant compared to getting caught for other criminal activity

- 7.2 identifying the fleeing driver in a post-event investigation (where the registered person in an important lead) is difficult when the vehicle is registered incorrectly or when the registered person does not cooperate with Police.

Te Manatū Waka supports a consistent, fair penalty system where penalties are proportionate to harm

- 8 Fleeing driver events attract significant public, political, and media interest. The inability to effectively hold fleeing drivers to account presents reputational risks for Police and undermines public trust and confidence.
- 9 Having stronger penalties may signal to drivers that there will be a severe outcome if they choose to flee, which could influence behaviour. It would also acknowledge the danger this behaviour creates for other road users and Police.
- 10 However, recent research by the Evidence-Based Policing Centre (EBPC) on fleeing drivers indicates that increasing penalties for failing to stop may have a limited effect on offending.¹
- 11 We support a consistent, fair penalty system, where penalties are proportionate to harm. We agree that penalties for these offences could be strengthened in some respects. However, as we do not have evidence that increased penalties will improve deterrence, we recommend penalties should continue to be consistent with the wider framework.

Police strongly recommends legislative responses to support effective identification and response to fleeing drivers

- 12 Police is strongly recommending the following legislative changes to support their ability to effectively identify and respond to fleeing drivers (see briefing BR/22/12CH to Minister of Police).

12.1 Strengthening fleeing driver penalties:

- 12.1.1 aligning the disqualification period for failing to stop offence penalties with comparable high-risk driving offences
- 12.1.2 new aggravated failing to stop offences with higher penalties
- 12.1.3 enabling removal of vehicles for failing to stop offences either via:
- 12.1.3.1 forfeiture
 - OR
 - 12.1.3.2 confiscation pre-conviction

¹ EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

12.2 *Strengthening obligations and penalties for owners of vehicles involved in fleeing driver events:*

12.2.1 creating vehicle owner liability for failing to stop offences

12.2.2 expanding 28-impoundment power to include offence of failing to comply with requirement to identify driver

12.2.3 enabling removal of vehicle where owner is convicted for failure to comply with requirement to identify fleeing driver either via:

12.2.3.1 forfeiture

OR

12.2.3.2 mandatory confiscation

12.3 *Improvements to the motor vehicle register:*

12.3.1 New requirement for vehicle registration to be for an identifiable person.

- 13 Police is also currently reviewing operational processes to manage enforcement challenges and better respond to fleeing driver events.
- 14 Police acknowledges that increasing fleeing driver penalties may have unintended or disproportionate outcomes, which Ministers will need to consider.
- 15 Police also acknowledges that Maori and Pacific people are over-represented in fleeing driver events and related offending. Imposing stronger penalties could adversely impact these groups while failing to have the intended deterrent effect. This will need to be considered alongside the potential benefits.
- 16 An analysis of the proposed changes, which includes advice from the Te Manatū Waka perspective, has been provided in Annex 1.

Te Manatū Waka supports some proposed changes where they align to the road safety risk

- 17 Te Manatū Waka supports the following proposal from Police.

New requirement for vehicle registration to identifiable person²

- 18 Police propose introducing a new requirement to ensure the registered person for a vehicle can be found for investigations to identify a fleeing driver. Police advised this would require prioritising improvements to the Motor Vehicle Register to support the identification of registered persons and drivers.

² A person that can be identified e.g. John Smith. Currently, vehicles can be registered to no identifiable person when a person notifies Waka Kotahi of a vehicle sale without providing the buyer's details, and the buyer does not inform Waka Kotahi of their details. There is also the issue of people providing incorrect or false information when registering the vehicle.

- 19 Te Manatū Waka supports ensuring the Motor Vehicle Register can be used for identification of the registered person for a vehicle. However, we believe this requirement already exists and only operational changes are needed.
- 20 Currently, where possible, Waka Kotahi notifies a seller of their obligation to provide the details of the new registered person of a vehicle. Where this does not occur, transactions such as annual licensing of the vehicle, cannot be completed. However, the buyer can still purchase Road User Charges and obtain a Warrant of Fitness.
- 21 There is currently a legal obligation on the seller to provide the buyers details to Waka Kotahi.³ Where a name and address for the buyer of the vehicle has been provided by the seller, Waka Kotahi will notify the buyer of their obligation to register the vehicle in their name.

22 s 9(2)(f)(iv)



23 s 9(2)(f)(iv)



Te Manatū Waka supports some of the proposed changes, but propose some amendments and clarifications

- 24 Te Manatū Waka supports the following legislative changes proposed by Police, with some changes and clarifications discussed in the following sections:
- 24.1 Aligning disqualification period for failing to stop offence penalties with comparable high-risk driving offences
 - 24.2 New aggravated failing to stop offences with higher penalties
 - 24.3 Mandatory seizure and impoundment and potential forfeiture of vehicle where the owner prevents driver identification.

Aligning the disqualification period for failing to stop offence penalties with comparable high-risk driving offences

- 25 The *Land Transport Act 1998* (LTA) and the *Sentencing Act 2002* currently provide a tiered response in the current maximum penalties⁴ for a fleeing driver on conviction:

³ See section 247 of the LTA and regulation 46 of the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011.

⁴ The Land Transport Act 1998 (LTA) sets out Police powers to require a driver to stop and remain stopped (section 114) and offence and penalty provisions on conviction (section 52A) where a driver

- 25.1 first offence – maximum \$10,000 fine, mandatory disqualification period of six months if speeding or driving dangerously when fleeing and potential confiscation of vehicle
- 25.2 second offence – maximum \$10,000 fine, mandatory disqualification period of one year and mandatory confiscation of vehicle⁵
- 25.3 third or subsequent offence – maximum term of three months' imprisonment, maximum \$10,000 fine, mandatory disqualification period of two years and mandatory confiscation of vehicle.
- 26 Additionally, for any fleeing driver offence, Police can seize and impound a vehicle for 28 days if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop (or remain stopped) as signalled, requested, or required.
- 27 The Police proposal would allow the Court to choose longer disqualification periods at the Court discretion, with no maximum disqualification period. Te Manatū Waka supports these changes in principle (for the first or second offences), as they recognise the high-risk nature of fleeing drivers and align with other high-risk driving offences. However, we think maximum penalties should be included.
- 28 The use of Court discretion allows for penalties to remain proportionate to the offending and maximum penalties would aid consistency in sentencing decisions.
- 29 Police has noted that the current maximum disqualification period for a third or subsequent failing to stop offence is higher than the starting point for other comparable high-risk driving offences. Given that this would cause inconsistency in the current penalty regime, Te Manatū Waka would not support changing the penalty for a third offence to allow a higher disqualification period.
- 30 We also note that currently for the first fleeing driver offence, the driver does not face disqualification of their licence unless the offence is committed while speeding or driving dangerously. It is not clear whether Police proposes to keep that current requirement, we propose that it should be kept.
- 31 We note that if the aggravating factors of speeding and driving dangerously are kept for the first fleeing driver offence, this prevents the need for a new aggravated fleeing driver offence for speeding and driving dangerously during a first fleeing driver offence (as discussed in the next sub-section).
- 32 As a modification to the Police proposal, we would propose the following mandatory disqualification periods:
- 32.1 **first offence:** six months or more, up to one year, if offence committed while speeding or driving dangerously
- 32.2 **second offence:** one year or more, up to two years

fails to do so and flees Police. The LTA also outlines when an officer may seize and impound a vehicle when the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped (section 96(1AB)).

⁵ Mandatory confiscation applies under section 129 of the Sentencing Act 2002 and is not limited to fleeing driver offences. There are a range of offences which, if committed within four years, will result in mandatory vehicle confiscation upon conviction.

32.3 **third offence:** two years.

New aggravated failing to stop offences with higher penalties

33 This proposal would introduce aggravating factors when a driver flees Police. The proposal responds to fleeing drivers who cause injury or death or commit anti-social or high-risk behaviour when fleeing from Police. For example, failing to stop while:

33.1 driving a stolen vehicle

33.2 driving dangerously or recklessly

33.3 speeding

33.4 impaired by alcohol or drugs

33.5 unlicensed, disqualified or suspended

33.6 while having unrestrained passengers, in particular a child

34 Te Manatū Waka supports the idea of aggravated offences for fleeing drivers in principle, but we think more work is required to identify appropriate aggravated offences and the appropriate penalty level for these.

35 The design of this offence would need to ensure that any aggravated offence would only apply to the most egregious fleeing driver events, rather than applying to every fleeing driver event. For example, it would be helpful to know if most fleeing driver offences involve speeding or driving dangerously.

36 We also note that separate offences and penalties already exist for the above examples of high-risk behaviour. We need to ensure that any penalty does not result in a person being charged twice for the same offence.

37 It may be appropriate to have different penalties for different aggravating factors, or tiered penalties for first, second and third or subsequent offences. If this proposal is progressed by Ministers, Te Manatū Waka would work with Police to identify appropriate aggravating factors and use the Effective Transport Financial Penalties Framework and Tool (OC210982 refers) to assess the appropriate penalty levels.

Mandatory seizure and impoundment and potential forfeiture of vehicle where owner prevents driver identification

38 This proposal would require Police to impound a vehicle where the registered owner was not able to identify the driver of the vehicle. Additionally, if the registered owner was convicted of failing to comply with a request to identify a fleeing driver, this proposal would require either forfeiture or mandatory confiscation of their vehicle.

39 We do not support forfeiture or mandatory confiscation of a vehicle on conviction due to the lack of consistency with the established land transport offence and penalty framework, and the disproportionate impact on Māori. These are likely to outweigh the potential road safety impact.

- 40 Currently, Police cannot seize or impound a vehicle where the registered person fails to comply with a request to identify the driver who has committed a fleeing driver offence.
- 41 We can see that 28-day impoundment may be a useful tool for Police when requesting information to help identify a fleeing driver, if registered owners intentionally fail or refuse to provide information, or provide false information to Police.
- 42 Vehicle impoundment is an evidence-based policy intervention, however in this circumstance there may be unintended consequences. We would recommend it was applied as a discretionary power only.
- 43 We also recommend that any changes to the legislation limit this power to only be used where Police officers have reasonable belief that the registered owner did not cooperate, or provided false or misleading information, in response to a request made under section 118 of the LTA.

Risks and limitations of discretionary impoundment where the registered person does not cooperate with Police inquiries

- 44 We note that there is a risk that this proposal does not address the current issue where the penalty for not cooperating with Police is lower than the penalty for a fleeing driver, if caught.
- 45 While for the first fleeing driver offence, vehicle impoundment may not be guaranteed, for the second and third fleeing driver offences the vehicle would be impounded. This would mean that some individuals may continue to deliberately not cooperate with Police where they were the driver themselves, or where they wish to protect the fleeing driver.
- 46 We note that there are still equity implications with this proposal. Loss of a vehicle can significantly impact those who do not have other transport options and may need their vehicle to travel to work, the supermarket, healthcare and other services. However, we consider the impact will be limited by:
- 46.1 the vehicle being impounded for 28-days then returned if the impoundment fees are paid
 - 46.2 the impoundment fees being lower than the generally applied penalty for failing to cooperate with a Police request
 - 46.3 requiring Police to have reasonable belief that the registered owner did not cooperate, or provided false or misleading information, in response to a request made under section 118 of the LTA.

Te Manatū Waka does not support the proposals that are likely to have significant equity and NZ Bill of Rights Act 1990 implications

- 47 Te Manatū Waka does not support the following legislative changes that Police has proposed:

Enabling the removal of vehicles used in commission of failing to stop offences

- 48 This proposal would allow Police to forfeit or confiscate a vehicle without a conviction. We do not support this proposal as the *NZ Bill of Rights Act 1990* (BORA) implications, the lack of consistency with the established land transport offence and penalty framework, and the disproportionate impact on Māori, are likely to outweigh the potential road safety impact. Current evidence indicates that short-term impoundment is an effective policy intervention.
- 49 If Ministers wish to proceed, Te Manatū Waka considers the least detrimental impact would come from only applying the penalty to aggravated fleeing driver offences and using confiscation rather than forfeiture.

Creating vehicle owner liability for failing to stop offences

- 50 This proposal would make the registered person of a vehicle liable for any fleeing driver offence, meaning the penalties would apply to them as if they were the fleeing driver.
- 51 This is intended to ensure cooperation from the registered person in identifying the fleeing driver. Currently the penalty for failing or refusing to provide information, or providing misleading information is a fine on conviction, not exceeding \$20,000. However, the courts very rarely issue a substantial financial penalty for this offence (generally around \$1,500).
- 52 Police notes that this would be consistent with how safety camera offences are currently issued, with a statutory declaration being used to transfer liability.⁶ However, safety camera offences have much lower penalties and do not result in licence disqualification or impoundment of a vehicle.
- 53 Te Manatū Waka supports appropriate penalties for registered persons who deliberately fail or refuse to provide information or provide false information to Police when information to help identify the driver as requested under section 118 of the LTA.
- 54 However, we do not support licence disqualification offences applying to the registered person. This is due to the inequitable impacts this penalty can have and the BORA implications created by shifting the burden of proof to require a registered person to prove they were not the driver. This is likely to engage section 25(c) of the BORA, which provides the right to be presumed innocent.

Changes to fleeing driver offences may have inequitable impacts on young, male, Māori drivers

- 55 New Zealand research⁷ shows that fleeing drivers are more likely to be younger and male, identify as Māori, have criminal and traffic offence histories, and not have a current driver licence, or be disqualified or suspended from driving.

⁶ Making a false declaration has an infringement offence of \$750. There is also a maximum penalty of a fine not exceeding \$10,000, on conviction.

⁷ IPCA & NZ Police, 2019, [Fleeing drivers in New Zealand: A collaborative review of events, practices and procedures](#)
J. Cording, A. Gore, A. Westerman, H. Kawai (on behalf of NZ Police), 2020, [Understanding the motivations of fleeing drivers: Individual factors](#)

- 56 A range of factors contribute to a driver considering fleeing as a reasonable option and fleeing Police when signalled to stop. There is a risk that increased penalties will further contribute to the distrust or fear of Police that contributes to the decision to flee.
- 57 Increased licence disqualification periods will also contribute to transport inequity as Māori are less likely to hold a driver licence. Figures from 2018 shows that 30 percent of Māori aged 16 to 24 have no licence, compared to 20 percent of Pākehā.⁸
- 58 In interviews with 40 individuals involved in Police pursuits, either as a driver or passenger⁹:
- 58.1 A large majority decided to flee to avoid being caught for other criminal activity, including being in a stolen car and breaching licence restrictions
- 58.2 Participants rarely planned to flee from Police, but they were willing to flee if they saw it as necessary
- 58.3 45 percent of participants reported that being under the influence at the time contributed to their decision to flee
- 58.4 Many participants had negative perceptions of Police, including previous negative interactions with Police, general anti-Police attitudes, and a perception of being unfairly harassed, which contributed as factors to or justified the decision to flee from Police
- 58.5 Common emotions experienced before, during and after a Police pursuit included panic, fear, adrenaline, and regret.
- 58.6 In general, participants either did not know what the potential legal consequences for failure to stop were, or thought that they paled in comparison to the penalties facing them for the other activities they were engaged in at the time of the pursuit. This was supported by a general belief that successfully pursuing fleeing driver charges was difficult for Police and prosecutors.

Next steps



- 59 We understand you will be meeting with the Ministers of Police and Justice to discuss the proposals provided to the Minister of Police. You may wish to discuss this advice at that time.
- 60 In consultation with you and the Minister of Justice, the Minister of Police will report back to Cabinet by September 2022 on final proposals to improve legislative responses to fleeing drivers.
- 61 If you provide us direction on your views of these proposals, Te Manatū Waka can support you with further information for the September report-back.

⁸ I. Sin, and H. Kotula, 2021, [Rates of driver licence holding in Aotearoa New Zealand](#), Motu Research Note 44, Motu Economic and Public Policy Research, Wellington, New Zealand.


⁹ J. Cording, A. Gore, A. Westerman, H. Kaiwai (on behalf of NZ Police), 2020, Understanding the motivations of fleeing drivers: Individual factors

ANNEX 1

Te Manatū Waka view of legislative changes proposed by Police



Proposal	Current offence	Proposed	Consistency with other penalties	Issue it addresses	BORA Implications	Equity impacts	MoT recommendation
Strengthening fleeing driver penalties							
 <p>Aligning disqualification period for failing to stop offence penalties with comparable high-risk driving offences</p>	<p>Mandatory disqualification</p> <p>1st offence: 6 months, if offence committed while speeding or driving dangerously</p> <p>2nd offence: 1 year</p> <p>3rd offence: 2 years</p>	<p>Mandatory disqualification</p> <p>1st offence: 6 months or more</p> <p>2nd offence: 1 year or more</p> <p>3rd offence: 2 years or more</p>	<p>Proposed 1st offence aligns with careless driving causing injury or death, dangerous or reckless driving no injury or death, and first or second excess breath/blood alcohol</p> <p>Proposed 2nd offence aligns with aggravated careless driving causing injury or death, dangerous or reckless driving causing injury or death, third and subsequent excess breath/blood alcohol, excess breath/blood alcohol causing injury or death</p> <p>Proposed 3rd offence is higher than the current disqualification starting point for other high-risk driving offences</p>	<p>A view amongst offenders that there is little consequence for fleeing from Police and that being pursued and caught is likely to result in worse outcomes than follow-up penalties.¹⁰</p>	<p>Unlikely, this increases existing provisions.</p>	<p>For people without access to other transport options this could limit their access to employment, health and other services. These individuals may still drive and find themselves facing further penalties. This could also create a fear of Police in young drivers, which is likely to reinforce their desire to flee when confronted by Police.</p>	<p>Support with some changes and clarifications required</p> <p>Support the changes to the first offence and second offence, assuming the qualifying requirements for speeding or driving dangerously remains for the first offence. These changes recognise the high-risk nature of fleeing and align with other high-risk driving offences.</p> <p>Do not support changing the third offence as it is higher than the current starting point for other high-risk driving offences, so an even higher penalty would not be proportionate.</p> <p>We propose the following mandatory disqualification periods:</p> <p>1st offence: 6 months or more, up to 1 year, if offence committed while speeding or driving dangerously</p> <p>2nd offence: 1 year or more, up to 2 years</p> <p>3rd offence: 2 years</p>
 <p>New aggravated failing to stop offences with higher penalties</p>	<p>Aggravating factors such as speeding or dangerous driving are only taken into account for the first offence.</p> <p>For subsequent offences, a Court will consider aggravating factors on a case-by-case basis to</p>	<p>No penalty proposed yet.</p> <p>Noted:</p> <ul style="list-style-type: none"> maximum term of imprisonment is 5 years for dangerous/reckless driving causing injury and excess breath/blood alcohol causing injury, and 	<p>More work required to identify appropriate aggravating factors.</p> <p>Would also need to run through the Effective Transport Financial Penalties Framework and Tool to identify an appropriate penalties.</p>	<p>Responds to fleeing drivers who cause injury or death or commit anti-social or high-risk behaviour when fleeing from Police. For example, failing to stop while:</p> <ul style="list-style-type: none"> driving a stolen vehicle 	<p>Unlikely, this increases existing provisions by taking into account additional risk-factors.</p>	<p>Would depend on the penalty proposed but likely to disproportionately impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending.</p>	<p>Support the principle of aggravated offences with more work required</p> <p>Support the idea of aggravated offences for fleeing drivers, but more work is required to identify appropriate aggravated offences and the appropriate penalty level for these.</p>


¹⁰ Evidence-Based Policing Centre *Understanding the motivations of fleeing drivers – Te Ikarere, a youth perspective of Police pursuits* (June 2021).

Proposal	Current offence	Proposed	Consistency with other penalties	Issue it addresses	BORA Implications	Equity impacts	MoT recommendation
	determine the sentencing outcome and levels of penalties applied.	<p>10 years imprisonment for the same offences causing death</p> <ul style="list-style-type: none"> - repeat impaired driving offences resulting in indefinite disqualification. 		<ul style="list-style-type: none"> • driving dangerously or recklessly • speeding • impaired by alcohol or drugs • unlicensed, disqualified or suspended • while having unrestrained passengers, in particular a child. 			<p>Need to ensure penalties only applies to egregious offending.</p> <p>May be appropriate to have different penalties for different aggravating factors, or tiered penalties for first, second and third or subsequent offences.</p>
 <p>Enabling the removal of vehicles for failing to stop offences</p>	<p>Police can seize or impound for 28 days a vehicle involved in a fleeing driver event (under section 96 of the LTA). The court may also issue a confiscation order (under section 128 or 129 of Sentencing Act) for a vehicle involved in a fleeing driver event but only post-conviction for failing to stop for Police.</p>	<p>New power to enable vehicle forfeiture without conviction where involved in fleeing driver events¹¹, with an appeals process.</p> <p>Alternative options:</p> <ul style="list-style-type: none"> - only apply penalty for new aggravated failing to stop offences - limit to second or third and subsequent offences - confiscation instead of forfeiture¹² 	<p>Inconsistent with the established land transport offence and penalty framework and could result in pre-conviction penalties being harsher than post-conviction penalties.</p>	<p>Provides a stronger and more definitive sanction than the current penalty of 28-day impoundment and will avoid the significant operational challenges of impoundment (e.g. risk of vehicle abandonment and cost implications for Police and towage and storage operators).</p>	<p>Significant BORA implications. Likely to engage section 27 as forfeiture of a vehicle in circumstances in which no prosecution is brought or no judicial oversight of the seizure of the vehicle would involve the imposition of a penalty without due process. This limit on the right to natural justice is unlikely to be justified and may give rise to an adverse section 7 report. Although, building in a judicial oversight mechanism would assist with avoiding an adverse section 7 report as it would enable the vehicle owner to appeal to an independent decision-maker.</p> <p>Likely to engage section 21 as the permanent deprivation of a person's property may be an unreasonable seizure. Although, is more likely to be held to be reasonable if there is a review process or judicial oversight.</p>	<p>Concerns about punishing registered vehicle owners where a vehicle was used without their knowledge or individuals and families losing their main form of transport.</p>	<p>Do not support</p> <p>The BORA implications, the lack of consistency with the established land transport offence and penalty framework, and the disproportionate impact on Māori, are likely to outweigh the potential road safety impact.</p> <p>Current evidence indicates that short-term impoundment is an effective policy intervention.</p> <p>Te Manatū Waka considers that a power of this nature would be most appropriate when targeted at offences with the most serious penalties on conviction (to maintain proportionality between pre- and post-conviction outcomes and justify the lack of judicial process). However, we note that these offences, most of which involve death and serious damage to the vehicle, would result in significant Police resource invested in identifying the offender. This would likely make the use of the proposed power unnecessary.</p> <p>If Ministers wish to proceed, Te Manatū Waka considers the least detrimental impact would come from only applying the penalty to aggravated fleeing driver offences</p>

¹¹ Forfeiture would result in the permanent taking of the vehicle with any proceeds from the sale of the vehicle generally remaining with the Crown. The Court may grant relief on the grounds of undue hardship or where someone has an interest in the vehicle.

¹² While it will still involve the permanent taking of the vehicle, with confiscation, if the vehicle is sold, the registered owner may receive some proceeds.

Proposal	Current offence	Proposed	Consistency with other penalties	Issue it addresses	BORA Implications	Equity impacts	MoT recommendation
and using confiscation rather than forfeiture.							
Strengthening obligations and penalties for owners of vehicles involved in fleeing driver events							
 <p>Creating vehicle owner liability for failing to stop offences</p>	<p>Court fine not exceeding \$20,000. However, the courts very rarely issue a substantial financial penalty for this offence (generally around \$1,500).</p>	<p>Vehicle owners liable for failing to stop offences and penalties, including licence disqualification and court fines and potentially imprisonment (if third or subsequent failing to stop offence), on conviction.</p>	<p>In the Land Transport Act 1998 (LTA), safety camera-detected offences have owner liability where the owner can be presumed to be the driver at the time the offence was committed, and the burden of proof is on them to disprove the offence.</p> <p>However, safety camera offences have much lower penalties and do not result in licence disqualification or impoundment of a vehicle.</p>	<p>Where the registered owner fails or refuses to provide this information or provides false or misleading information when Police are undertaking follow-up enquiries to identify a fleeing driver.</p> <p>The consequences for failing to stop for Police (licence disqualification and potential imprisonment for repeat offences) outweigh a small court fine, so it is usually in the vehicle owner's interest to not comply with Police requests, especially where they were the driver or wish to protect whoever was driving.</p>	<p>Shifting the burden of proof to require a vehicle owner to prove they were not the driver is likely to engage the right to be presumed innocent (section 25(c) of BORA)</p>	<p>This proposal presents risks, especially in terms of proportionality where a registered owner who does not know or cannot prove who was driving may be subject to a significant penalty.</p> <p>This is likely to disproportionately impact those from lower socioeconomic backgrounds more as they may not have the understanding of the legislation or resources to appeal a decision to disqualify their licence or impound/confiscate or forfeit a vehicle.</p>	<p>Do not support</p> <p>Te Manatū Waka supports increased penalties for registered owners who intentionally fail or refuse to provide information, or provide false information to help identify the driver is requested.</p> <p>However, we do not support licence disqualification applying to the registered owner due to the inequitable impacts this penalty can have.</p>
 <p>Mandatory seizure and impoundment and potential forfeiture of vehicle where owner prevents driver identification</p>	<p>Cannot seize or impound a vehicle where the registered owner fails to comply with the requirement to identify the driver who has committed driving offences, including failing to stop for Police.</p> <p>The court may issue a confiscation order post-conviction for failing to comply with requirement to identify the driver.</p>	<p>Power for Police to seize and impound a vehicle driven by a fleeing driver for 28 days where registered owner fails to comply with the requirements to identify the driver.</p> <p>Alternative options:</p> <ul style="list-style-type: none"> - forfeiture or mandatory confiscation of the vehicle with a conviction, with a review or appeal mechanism for forfeiture. - forfeiture of the vehicle only where the owner provides false or misleading information to prevent identification of the fleeing driver. 	<p>In the LTA, safety camera-detected offences have owner liability where the owner can be presumed to be the driver at the time the offence was committed, and the burden of proof is on them to disprove the offence.</p> <p>However, safety camera offences have much lower penalties and do not result in licence disqualification or impoundment of a vehicle.</p>	<p>Where the registered owner fails or refuses to provide this information or provides false or misleading information when Police are undertaking follow-up enquiries to identify a fleeing driver.</p> <p>The consequences for failing to stop for Police (licence disqualification and potential imprisonment for repeat offences) outweigh a small court fine, so it is usually in the vehicle owner's interest to not comply with Police requests, especially where they were the driver or wish to protect whoever was driving.</p>	<p>Unlikely.</p>	<p>This proposal presents risks, especially in terms of proportionality where a registered owner who does not know or cannot prove who was driving may be subject to a significant penalty.</p> <p>This is likely to disproportionately impact those from lower socioeconomic backgrounds more as they may not have the understanding of the legislation or resources to appeal a decision to impound a vehicle.</p>	<p>Support with some changes and clarifications required</p> <p>We do not support forfeiture or mandatory confiscation of a vehicle with a conviction. This is because of the lack of consistency with the established land transport offence and penalty framework and the disproportionate impact on Māori are likely to outweigh the potential road safety impact. Current evidence indicates that short-term impoundment is an effective policy intervention.</p> <p>We can see that 28-day impoundments may be a useful tool for Police when requesting information to help identify a fleeing driver, if registered owners intentionally fail or refuse to provide information or provide false information to Police.</p>

Proposal	Current offence	Proposed	Consistency with other penalties	Issue it addresses	BORA Implications	Equity impacts	MoT recommendation
							<p>Vehicle impoundment is a significant penalty which may have unintended consequences. We would recommend it was applied as a discretionary power only.</p> <p>We also recommend that any changes to the legislation limit this power to only be used where Police have reasonable belief that the registered owner did not cooperate, or provided false or misleading information, in response to a request made under section 118 of the LTA.</p>
Improvements to the Motor Vehicle Register							
 <p>New requirement for vehicle registration to identifiable person</p>	<p>Currently vehicles can be registered to persons unknown. This circumstance arises where a person notifies Waka Kotahi of a vehicle sale without providing the buyer's details, and subsequently the buyer does not inform Waka Kotahi that they are the new owner. There is also the issue of people providing incorrect or false information when registering the vehicle.</p>	<p>Creating a new requirement for vehicles to be registered to an identifiable person, to assist Police investigations.</p> <p>This would require prioritising improvements to the Motor Vehicle Register to support the identification of registered owners and drivers.</p>	<p>No penalty has been proposed as part of this proposal.</p>	<p>Currently, Police face difficulties investigating fleeing driver and other criminal offending involving vehicles if the registered person is unknown. The registration details of a vehicle form a key part of Police investigations, as they are the most efficient and effective way of obtaining information quickly. Even if the registered owner of the vehicle is not necessarily the driver of the vehicle at the time of an offence, the information provides Police with an essential lead.</p>	<p>None.</p>	<p>None expected.</p>	<p>Support</p> <p>Support ensuring the Motor Vehicle Register can be used for identification of the registered person for a vehicle. However, we believe this requirement already exists and only operational changes are needed.</p> <p>Currently, where possible, Waka Kotahi proposes to notify a seller of their obligation to provide the details of the new registered person of a vehicle. Where this does not occur, transactions such as annual licensing of the vehicle, cannot be completed. However, purchasing Road User Charges and getting a Warrant of Fitness can still be completed.</p> <p>There is currently a legal obligation on the seller to provide the buyers details to Waka Kotahi. Where a name and address for the buyer of the vehicle has been provided by the seller, Waka Kotahi will notify the buyer of their obligation to register the vehicle in their name.</p>

Hon Chris Hipkins, Minister of Police

Hon Michael Woods, Minister of Transport

Hon Kiri Allan, Minister of Justice

Responding to fleeing drivers, s 9(2)(f)(iv)

Date	22 September 2022	File reference	OC220790 (MoT) BR/22/66CH (Police)
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Action sought	Timeframe
<p>Indicate which options you want to include in an October Cabinet paper on:</p> <ul style="list-style-type: none"> fleeing drivers s 9(2)(f)(iv) s 9(2)(f)(iv) 	By 30 September

Contacts for telephone discussion (if required)

Name	Position	Telephone		First contact
		(work)	(a/h)	
Brendan Gage	General Manager, Criminal Justice, MOJ	s 9(2)(a)	s 9(2)(a)	<input type="checkbox"/>
Jeremy Wood	Executive Director, Policy and Partnerships, NZ Police	s 9(2)(a)	s 9(2)(a)	<input type="checkbox"/>
Megan Moffet	Manager, Regulatory Policy, Te Manatū Waka	s 9(2)(a)	s 9(2)(a)	<input type="checkbox"/>

Minister's office to complete

Noted Approved Overtaken by events
 Referred to: _____
 Seen Withdrawn Not seen by Minister

Minister's office's comments

In confidence

Purpose

1. To set out issues and options in relation to:
 - Penalising fleeing drivers and identifying fleeing drivers;
 - s 9(2)(f)(iv)
 - s 9(2)(f)(iv)
2. To seek Ministers' directions on which options you would prefer to receive further advice on and include in the October report back to Cabinet.

Background

3. On 4 July 2022, Cabinet agreed that Ministers would report back on proposals to strengthen penalties and support New Zealand Police's (Police's) response to fleeing drivers s 9(2)(f)(iv)
4. This paper sets out a range of options to address issues in relation to fleeing drivers, identification of these drivers, s 9(2)(f)(iv) in **Appendices 1 to 4**. The effectiveness, operational feasibility and Bill of Rights implications are discussed but will need further consideration.
5. Several options relate to the penalties for the relevant offences. It is worth noting that there is no evidence that more severe penalties lead to a reduction in criminal behaviour. Rather, the evidence indicates that the *certainty* of punishment is a much more effective deterrent than increasing the severity of punishment, which does little to deter offending. Strategies that increase offenders' perceptions that they will be apprehended are more likely to influence behaviour and reduce offending. There is also evidence favouring the effectiveness of swift sanctions.
6. These points are reinforced in recent Evidence Based Policing Centre research on interventions for fleeing drivers which found that the most successful interventions were likely to target increasing the perception of potential offenders that they will be identified and held to account, reducing the perception that fleeing is worth the risk; improving the relationship between potential offenders and the police and increasing perceived procedural justice; and preventative measures to reduce other offending (e.g. efforts to increase driver licensing, or drug and alcohol treatment).¹
7. While this paper contains legislative options related to offence penalties, improving other aspects of the transport system may contribute to the successful identification of fleeing drivers.

¹ Evidence Based Policing Centre, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), p5.

8. There is currently a significant amount of work occurring in the transport system that could support holding fleeing drivers to account and help to identify fleeing drivers. ^{s 9(2)(f)(iv)}

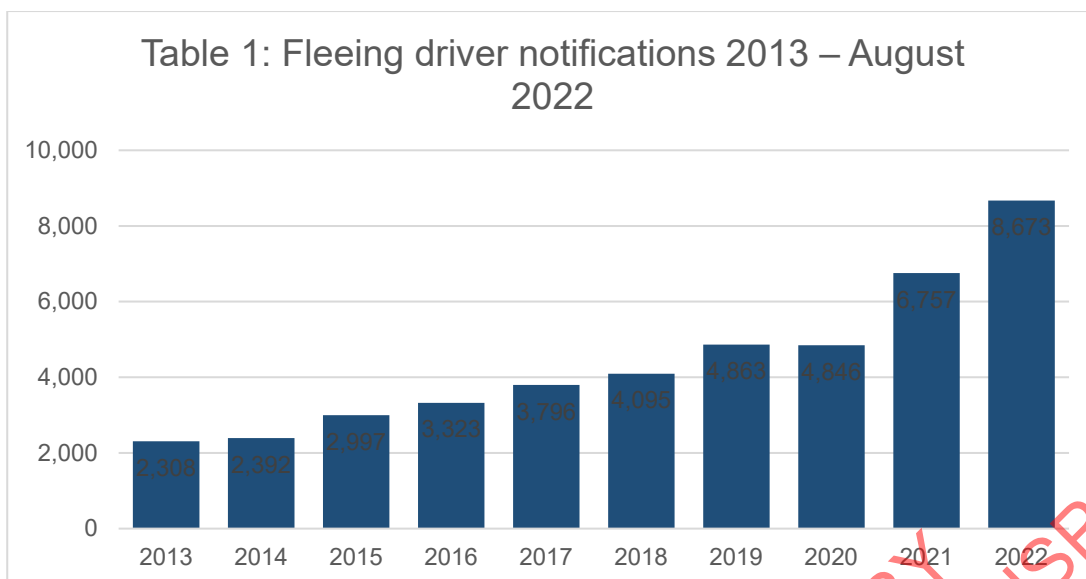


9. Cabinet also previously agreed to an expansion of the safety camera network (CAB-19-MIN-0575 refers), known as *Tackling Unsafe Speeds*. This will both increase the number of cameras on the road network, but also intends to introduce average speed cameras. This may further aid in the identification of drivers. Safety cameras will be prioritized on the highest risk roads. This may mean that there will be gaps in the coverage of the rural network when compared to the urban network where there may also be increased coverage due to the proliferation of safety cameras to monitor special vehicle lanes and traffic lights.
10. Te Manatū Waka acknowledges prior advice from Police that noted that improvements to the Motor Vehicle Register are required to improve the accuracy of data. These issues have been raised with Waka Kotahi New Zealand Transport Agency, who maintain the Motor Vehicle Register and consideration is being given as to what solutions may exist to address concerns in relation to the identification of registered persons and the transfer of responsibility for vehicles.

Fleeing drivers

Fleeing driver events are increasing

11. A fleeing driver event occurs when a driver fails to stop or to remain stopped when required by Police, or a driver flees as a result of Police presence, whether signalled to stop or not.
12. Fleeing driver events are increasing. There have been 8,673 fleeing driver events so far this year. This is already a substantial increase on last year's 6,757 events. The below table shows the increase in fleeing driver events from 2013 until August 2022.
13. Fleeing driver events undermine the road safety regulatory system and make it difficult to keep communities safe as they interfere with Police's ability to carry out appropriate enforcement action. Fleeing drivers often engage in other road safety offences, such as dangerous driving, which pose serious safety risks to other road users.



14. Police changed its pursuit policy² and recording practice³ in December 2020, but this only partially accounts for the increase in fleeing driver events. The overarching trend over the long term is of an increase in fleeing driver events.

Fleeing drivers may be unaware of the penalties for failure to stop or consider them less serious than penalties for other offending

15. Evidence (from small-scale empirical research) suggests there appears to be a view amongst offenders that there is little consequence for fleeing from Police. There is a perception that any additional penalty for fleeing is insignificant, compared with penalties they may face for other offending during a fleeing driver event, which contributes to the motivation to flee.⁴

Identification of drivers after the fact presents significant enforcement challenges for Police

16. Police's pursuit policy now places more emphasis on post-event investigations than pursuing fleeing drivers. While this change has had significant safety gains (which are critical to maintain), it means post-event investigations are essential for identifying drivers so they can be held to account.
17. Police is, however, facing challenges identifying and apprehending fleeing drivers under current legislative settings. The perception among fleeing drivers that they will not be apprehended and held to account, especially if they evade being caught at the time of the event, appears to contribute to the problem.⁵ The need to increase the certainty of being caught after a pursuit also supports the importance of post-event investigations.

² The policy now emphasises the use of post-event investigations rather than commencing or continuing a pursuit.

³ Police recording practices changed in December 2020 to include not only pursuit events and abandoned events but also events where the driver fled but a pursuit was not initiated.

⁴ University of Canterbury. *Understanding the motivations of fleeing drivers: Individual factors (9 November 2020)*; Police & Withbox. *Te Ikarere, a youth perspective of Police pursuits* (June 2021). The latter research involved engagement and interviews with 16 young people aged 13-19 years. Majority male (13 participants) and self-identified as Māori (14 participants).

⁵ Ibid.

18. The proportion of drivers who were not identified from a fleeing driver event has increased by 64 percent since December 2020.⁶

Options to increase penalties for fleeing drivers

19. Several options are included as **appendix 1**. We seek a decision from you as to which options, if any, you wish to receive further advice on and include in the October report back to Cabinet, to be indicated in **appendix 1**. In summary, the options are:
- Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary)
 - Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences
 - s 9(2)(f)(iv) [REDACTED]
 - Enabling permanent removal post-conviction (forfeiture)
 - Enabling permanent removal of vehicles without conviction (forfeiture or confiscation)

Options to assist in identifying fleeing drivers after the event

20. Several options are included as **appendix 2**. We seek a decision from you as to which options, if any, you wish to receive further advice on and include in the October report back to Cabinet, to be indicated in **appendix 2**. In summary, the options are:
- Introducing a fixed penalty for failing to provide information (rather than up to a maximum of \$20,000)
 - Creating a liability for failing to stop for the registered person of a vehicle
 - Enabling Police to seize and impound a vehicle for up to 28 days where the owner fails to comply with a request for information to help identify the driver
 - Requiring courts to issue mandatory confiscation orders (post-conviction) for failing to identify the driver
 - Enabling courts to issue discretionary forfeiture orders (post-conviction) for failing to identify the driver

⁶ [Based on analysis of notifications in Police fleeing driver database as of May 2022.](#)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

⁷ For example, the incident on Waikato Expressway in March 2022: <https://www.nzherald.co.nz/nz/it-was-scary-witnesses-fear-for-their-safety-as-bike-gang-drives-on-wrong-side-of-the-road/JRVACTZWYZ2RA5DOLLM7HW4LNA/>

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Next steps

Officials recommend progressing any desired changes as a separate Road Safety Bill

- 32. We will prepare a report back to Cabinet covering the options you have selected in the appendices, seeking policy approvals. You should be aware that decisions will be required at the meeting on 29 September to enable the intended report back to Cabinet in October.
- 33. The Criminal Activity Intervention Legislation Bill will be referred to Select Committee by the time final Cabinet decisions are made on how to progress this work. This would mean that a Supplementary Order Paper would be needed to include the legislative changes in this briefing within this Bill. This is not recommended due to the significance of the remaining proposals and the policy scope of the Bill.
- 34. In reporting back to Cabinet, we recommend seeking policy approvals and permission to issue drafting instructions to Parliamentary Counsel Office with the intent to introduce a separate Road Safety Bill in early 2023 and request a shortened Select Committee process. This would allow this work to progress on a slightly slower timeframe to the Criminal Activity

Intervention Legislation Bill, but could allow the road safety bill to be passed before the election.

Recommendations

35. We recommend that you:

1. **note** that decisions are sought to inform the report back requested by Cabinet on July 5, initially set to September 2022 but later revised to October 2022 [CAB-22-MIN-0264 refers] NOTED
2. **indicate** in the attached tables (Appendices 1-4) which options you would like to include in the October Cabinet paper



Jeremy Wood
**Executive Director, Policy and Partnerships
NZ Police**



Megan Moffet
**Manager, Regulatory Policy, Te Manatū
Waka**



Brendan Gage
**General Manager, Criminal Justice, Ministry
of Justice**

APPROVED

SEEN

NOT AGREED

APPROVED

SEEN

NOT AGREED

Hon Chris Hipkins

Minister of Police

Date / /

Hon Michael Wood

Minister of Transport

Date / /

APPROVED SEEN NOT AGREED

Hon Kiri Allan

Minister of Justice

Date / /

Attachments:

- **Appendix 1** – Options to increase penalties for fleeing drivers
- **Appendix 2** – Options to assist in identifying fleeing drivers after the event
- s 9(2)(f)(iv) [Redacted]
- s 9(2)(f)(iv) [Redacted]

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APPENDIX 1 – OPTIONS TO INCREASE PENALTIES FOR FLEEING DRIVERS

Options	Advantages	Disadvantages	Further advice
<p>Increasing driver licence disqualification periods – up to a maximum (maximums will vary)</p> <p>Increasing disqualification periods for first, and second failing to stop offences:</p> <ul style="list-style-type: none"> A first failing to stop offence (committed while speeding or driving dangerously) would receive a mandatory disqualification of six months to one year (rather than a set period of 6 months). A second failing to stop offence would receive a mandatory disqualification of one to two years (rather than a set period of one year). Third or subsequent offences would remain at a mandatory disqualification period of two years as the period is already higher than comparable offences. <p>This would align failing to stop offences with more serious driving offences such as dangerous driving where injury occurs (mandatory disqualification of 1 year or more).</p> <p>Retains current approach of no disqualification for first offence, unless committed while speeding or driving dangerously.</p>	<p>May reduce the likelihood of reoffending by the disqualified person, as it limits their ability to drive for a lengthier period (though some will continue to drive despite the disqualification).</p> <p>Evidence suggests penalties that emphasise loss (e.g. of a licence/vehicle) may be much more effective at changing behaviour.⁸</p> <p>Signals that fleeing Police is considered serious offending, particularly if coupled with activities to promote greater awareness.</p> <p>Offenders disqualified for over one year are required to re-sit their driver licence test, which would provide an opportunity to reinforce expected driving behaviour. It may also delay the return to driving and increase the deterrent effect of licence disqualification.⁹</p> <p>Provides courts a level of discretion to consider individual circumstances (within ranges for disqualification periods, where applicable).</p> <p>No operational implications for Police as similar to status quo in terms of process.</p>	<p>Lack of general deterrent effect in regards to primary offence. Recent research by the Evidence-Based Policing Centre (EBPC) on fleeing drivers indicates that increasing penalties for failing to stop may have a limited effect on offending.¹⁰ This is particularly so given that fleeing drivers tend to make snap decisions in the heat of the moment, rather than careful weighing of options.</p> <p>Would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare, and other services.</p> <p>Failing to stop (in and of itself) may not be dangerous and is arguably less serious than offences such as dangerous driving which carry a greater risk of harm. As such it may not be comparable and should attract a lesser penalty. There is a risk this penalty could be considered disproportionate.</p> <p>Māori and Pacific people are over-represented in fleeing driver events and related offending. Imposing stronger penalties could adversely impact these groups.</p> <p>Longer disqualification periods (and additional requirements such as re-sitting licence tests) may simply encourage offenders to drive without a licence. Evidence shows that many disqualified drivers continue to drive.¹¹</p> <p>This proposal could increase breach offences for driving while disqualified (due to longer periods of disqualification) with associated impact on the courts.</p>	YES / NO
<p>Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences, as a maximum</p> <p>Remove the current tiered penalty structure for failing to stop offences and apply the third and subsequent offence penalties for all failing to stop offences (with the details of the disqualification period to be developed further).</p> <p>The current penalty for a person convicted for a first offence is:</p> <ul style="list-style-type: none"> a fine not exceeding \$10,000; and 	<p>Gives the court the discretion to impose stronger penalties (although this may not necessarily result).</p> <p>Could result in a longer disqualification period for first offences if aggravating factors (driving dangerously or speeding) are no longer a specific requirement for imposing a 6 month disqualification.</p> <p>Signals that fleeing Police is considered serious offending, particularly if coupled with activities to promote greater awareness.</p> <p>Could reduce future offending as driver disqualified.</p> <p>Removes enforcement challenges as earlier offending does not need to be established.</p>	<p>Lack of general deterrent effect. Recent research by the Evidence-Based Policing Centre (EBPC) on fleeing drivers indicates that increasing penalties for failing to stop may have a limited effect on offending.¹²</p> <p>Could result in shorter disqualification periods for second, third and subsequent offences, particularly lower-level offending, if mandatory disqualification periods are not set.</p> <p>Māori and Pacific people are over-represented in fleeing driver events and related offending. Imposing stronger penalties could adversely impact these groups.</p>	YES / NO

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

⁹ J Hatfield, T Senserrick, S Boufous, L Mooren, A Williamson, C Sakashita and S Job, Human factor considerations for a licensing point system, Transport and Road Safety (TARS) Research, School of Aviation, University of New South Wales, NZ Transport Agency research report 657 (2019), p.25; Basili, M and A Nicita (2005) Deterrence and compliance in a demerit point system. *Universita degli Studi di Siena*.

¹⁰ EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

¹¹ J Hatfield, T Senserrick, S Boufous, L Mooren, A Williamson, C Sakashita and S Job, Human factor considerations for a licensing point system, Transport and Road Safety (TARS) Research, School of Aviation, University of New South Wales, NZ Transport Agency research report 657 (2019), p.23; Joerger, M (2002) Profile of driver problems follow-up evaluation: an examination of driver demographic information and driving record. Oregon Department of Transportation; Watson, B (1998) The effectiveness of drink driving licence actions, remedial programs and vehicle-based sanctions. Pp66–87 in Proceedings 19th ARRB Research Conference.

¹² EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

<ul style="list-style-type: none"> mandatory disqualification of six months only if driving dangerously or speeding. <p>The current penalty for a person convicted for a second offence is:</p> <ul style="list-style-type: none"> a fine not exceeding \$10,000; and mandatory disqualification of one year <p>The current penalty for a person convicted for a third or subsequent offence is:</p> <ul style="list-style-type: none"> imprisonment for a term not exceeding three months a fine not exceeding \$10,000; and mandatory disqualification of two years. <p>Under this option, the disqualification period would not exceed two years. We will create some more detailed options for how this might work as there are several possible approaches.</p>	<p>Court discretion will apply to allow individual circumstances to be considered.</p>	<p>Could have unintended consequences, such as disproportionate penalties on low-level offending.</p> <p>May have an operational impact on the justice system due to increased prison sentences, fines and lengthier disqualification periods.</p>	
<p>s 9(2)(f)(iv)</p> <p>[Redacted]</p>	<p>[Redacted]</p>	<p>s 9(2)(h), s 9(2)(f)(iv)</p> <p>[Redacted]</p> <p>s 9(2)(f)(iv)</p> <p>[Redacted]</p>	<p>s 9(2)(f)(iv)</p>
<p>Enabling permanent removal of vehicles post-conviction for failure to stop (forfeiture)</p> <p>This option would provide the court the ability to issue a forfeiture order instead of a confiscation</p>	<p>While fleeing drivers are less likely to be influenced by the likely financial or criminal penalty, removing the vehicle would prevent further offending with that vehicle.</p>	<p>Unlikely to have an immediate deterrent effect on current offending. Risk it could lead people to flee more often and in a more dangerous manner to avoid losing their car.¹⁷</p>	<p>YES / NO</p>

¹³ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p. 16.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁷ Ibid.

<p>order for drivers who fail to stop and remained stopped.</p> <p>Currently the court may issue a confiscation order under section 128 of the Sentencing Act 2002 for a vehicle involved in a fleeing driver event. It must issue a confiscation order if a second driving offence is committed within a 4 year period.</p> <p>Retains ability for court to consider undue hardship and current review and appeal mechanisms.</p>	<p>Would be a significant sanction which may outweigh the possible rewards of committing the offence.</p> <p>Evidence suggests penalties that emphasise loss (e.g. of licence/vehicle) may be much more effective at changing behaviour.¹⁶</p> <p>Signals that fleeing Police is considered serious offending, particularly if coupled with activities to promote greater awareness.</p> <p>Court discretion provides ability to allow consideration of individual circumstances.</p>	<p>Would be a disproportionate penalty, when compared with other offences and penalties in the transport regime. Forfeiture is usually reserved for high end offences (e.g. maximum term of 5 years).</p> <p>Would have a greater impact on people without access to other transport options and lower socio-economic groups, who may need their vehicle to travel to work, the supermarket, healthcare, and other services.</p> <p>Likely to have NZBORA implications:</p> <ul style="list-style-type: none"> • s 21: unreasonable search and seizure • s 25 right to minimum standards of criminal procedure • s 27: right to justice. 	
<p>Enabling permanent removal of vehicles without conviction (forfeiture or confiscation)</p> <p>This option would create a new forfeiture power enabling Police to remove vehicles involved in fleeing driver events, without conviction. Forfeiture would result in the permanent taking of the vehicle pre-conviction, with any proceeds from the sale of the vehicle remaining with the Crown.</p> <p>Police can currently seize or impound vehicles involved in fleeing driver events for up to 28-days under section 96 of the LTA. However, Police cannot currently require vehicles to be permanently removed through confiscation or forfeiture without conviction.</p>	<p>While fleeing drivers are less likely to be influenced by the likely financial or criminal penalty, removing the vehicle would prevent further offending with that vehicle.</p> <p>Would be a significant sanction which may outweigh the possible rewards of committing the offence.</p> <p>Evidence suggests penalties that emphasise loss (e.g. of a licence/vehicle) may be more effective at changing behaviour.¹⁸</p> <p>May increase the perception that Police are holding fleeing drivers to account, particularly if coupled with activities to promote greater awareness.</p> <p>Would prevent further offending with that vehicle as vehicle permanently removed.</p>	<p>As above – unlikely to deter offending and risk it could lead to more fleeing and dangerous driving to avoid losing their car.</p> <p>Concerns this would be a wholly disproportionate penalty.</p> <p>Would have significant BORA implications, in particular:</p> <ul style="list-style-type: none"> • s 21: unreasonable search and seizure • s 25 right to minimum standards of criminal procedure • s 27: right to justice. <p>s 9(2)(h)</p> <p>Would potentially have an operational impact for courts because of more appeals.</p> <p>Would have a greater impact on people without access to other transport options.</p> <p>May result in courts not imposing other penalties because vehicle has already been permanently removed.</p> <p>This could undermine trust and confidence in Police and the justice system. The public's views on the rule of law, including the presumption of innocence and right to a fair trial, could be negatively impacted.</p>	<p>YES / NO</p>

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

¹⁸ Ibid.

APPENDIX 2 – OPTIONS TO ASSIST IN IDENTIFYING FLEEING DRIVERS AFTER THE EVENT

Options	Advantages	Disadvantages	Further advice
<p>Amending the financial penalty for failing to provide information to a fixed penalty</p> <p>Set a fixed penalty for registered vehicle owners who fail or refuse to disclose the identity of a fleeing driver that is applicable on conviction (rather than the current fine of up to a maximum of \$20,000).</p> <p>A \$5,000 fine is proposed (based on initial assessment). This is compared with a median fine of \$600 currently for failing to identify a driver (2018 – 2021).</p>	<p>Would provide a strong regulatory lever, if set at an appropriate level.</p> <p>May provide additional incentive for vehicle owners to provide information to Police.</p> <p>Evidence indicates that targeting penalties to owners, increases offenders' perceptions that they will be identified and held to account.¹⁹</p> <p>Enforcing penalties on vehicle owners may mean they take a more proactive approach to monitoring the use of their vehicle.²⁰</p>	<p>Would have a greater impact on lower socio-economic groups as they may be unable to pay and be referred to debt collectors, which could have a significant impact on their families and lives.</p> <p>This would be an outlier in the existing Court regime, in that a majority of financial penalties provide a level of discretion for judges to consider financial hardship, the circumstances of the offending, etc. It would remove the ability for the Court to set the penalty at an appropriate level for the circumstances of the offending and the ability of the offender to pay. This could lead to disproportionate penalties.</p> <p>A fixed penalty would go against recent policy direction e.g. repeal of three strikes law that limited judicial discretion in sentencing.</p> <p>This would also have an operational impact on the courts, with increased enforcement action.</p>	YES / NO
<p>Creating a liability for failing to stop for the registered person of a vehicle</p> <p>This would make the registered vehicle owner liable for failing to stop offences and penalties including driver licence disqualification and court fines and potentially imprisonment.</p> <p>This approach has been used for infringement offences such as speeding. However, for speeding the process for the owner to transfer liability on to someone else if they were not driving is straightforward and involves a simple statutory declaration. The attaching of liability to the driver also does not apply when the speeding is more than 50 km/h over the limit, where a criminal penalty applies rather than an infringement.</p> <p>Could include an oversight mechanism where owners can seek review (to mitigate proportionality concerns).</p>	<p>Would provide a strong regulatory lever to deter offending, as vehicle owners would be liable for mandatory disqualification and could be liable for imprisonment or a substantial financial penalty.</p> <p>May provide additional incentive for vehicle owners to provide information to Police.</p> <p>Evidence indicates that targeting penalties to owners, increases offenders' perceptions that they will be identified and held to account.²¹</p> <p>Enforcing penalties on vehicle owners may mean they take a more proactive approach to monitoring the use of their vehicle.²²</p>	<p>This will have significant NZBORA implications, in particular:</p> <ul style="list-style-type: none"> • s 14: freedom of expression (including the right to silence) – this right would likely be engaged as the person charged would need to provide a statement/evidence about the identity of the driver to avoid liability • s 21: unreasonable search and seizure – due to exposure to penalties involving the vehicle • s 25(c): right to be presumed innocent • s 25(d): right not to be a witness or confess guilt - as above, this would likely be engaged as the person would need to provide information to avoid liability • s 27: right to justice <p>Would be a disproportionate response, when compared with other offences and penalties in the transport regime. Speeding and other offences where this approach is used are usually infringement offences, whereas this would result in a criminal conviction which is a much more serious outcome.</p> <p>This is likely to disproportionately impact those from lower socioeconomic backgrounds more as they may not understand the legislation or have the resources to appeal a decision.</p> <p>This could undermine trust and confidence in Police and the justice system.</p>	YES/NO

¹⁹ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

Options	Advantages	Disadvantages	Further advice
		<p>Would shift the burden of proof onto the registered person to prove they were not the driver. This may be contentious and problematic from a NZBORA perspective.</p> <p>Potentially significant volume of appeals which would have an impact on the court system.</p>	
<p>Allowing Police to seize and impound a vehicle for 28 days for owner failing or refusing to identify the driver of a fleeing driver event</p> <p>Would explicitly provide the power to seize and impound (or continue to impound) where the registered person fails to comply with a request for information under section 118(4) LTA.</p> <p>Would retain requirement for vehicle to be released if charges are not laid and current review and appeal mechanisms.</p> <p>Police currently have the power to seize and impound a vehicle for 28 days for failure to stop. Further work is needed to consider the interaction of this possible new power with the existing power.</p>	<p>Would enable Police to seize and impound a vehicle owners' vehicle when the vehicle owner fails to cooperate. Would provide clarity on ability to impound in this situation.</p> <p>May provide additional incentive for owners to provide information.</p> <p>Evidence indicates that targeting penalties to owners, increases offenders' perceptions that they will be identified and held to account.²³</p> <p>Enforcing penalties on vehicle owners may mean they take a more proactive approach to monitoring the use of their vehicle.²⁴</p> <p>Would prevent future offending with that vehicle for the period of impoundment.</p>	<p>Strong risk of NZBORA non-compliance (previous proposal subject to section 7 report, found in breach of s 21). May potentially be mitigated by requiring Police to form a reasonable belief that impounding the vehicle is necessary to prevent an imminent threat to road safety (to ensure rational connection to the objective of road safety). However, this would limit the possible practical application of the power.</p>	<p>YES / NO</p>
<p>Requiring permanent vehicle removal for failing to identify driver (mandatory confiscation for all offences – post-conviction)</p> <p>Would require courts to confiscate vehicles involved in fleeing driver events where the register vehicle owner fails or refuses to provide information to identify the driver under section 118 (4) of the LTA.</p> <p>Courts may currently issue a confiscation order for failing to identify a driver. In addition, courts are required to confiscate vehicles if a subsequent driving related offence is committed within a four-year period. The driving offence does not have to be for the same offence.</p> <p>Retains requirement for courts to consider undue hardship.</p> <p>Could include review mechanisms modelled on the current mitigations for post conviction confiscation of vehicles.</p>	<p>Would be a significant lever to require information to be provided to Police.</p> <p>There is evidence that indicates that targeting penalties to owners, increases offenders' perceptions that they will be identified and held to account.²⁵</p> <p>Enforcing penalties on vehicle owners may mean they take a more proactive approach to monitoring the use of their vehicle.²⁶</p> <p>Would prevent future offending with that vehicle as vehicle permanently removed.</p>	<p>Likely to engage s 21 of NZBORA, in relation to unreasonable search and seizure.</p> <p>This is a severe penalty and would be a disproportionate response, when compared with other offences and penalties in the transport regime. For example, this would be more severe than the penalty for failure to stop.</p> <p>This proposal presents risks, especially in terms of proportionality where a registered owner who does not know or cannot prove who was driving may be subject to a significant penalty.</p> <p>Review mechanisms could be used to mitigate some of these concerns, but this will still place an inconvenience or cost on registered persons. Consideration would also need to be given to the operational impact on Courts to be able to consider any reviews/appeals in a timely manner.</p> <p>This will have a disproportionate impact in Māori, which will outweigh any potential road safety benefit.</p> <p>Would have a greater impact on people without access to other transport options who may need their vehicle to travel to work, the supermarket, healthcare and other services.</p>	<p>YES / NO</p>

²³ EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), pp.4 and 26.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

Options	Advantages	Disadvantages	Further advice
<p>Enabling permanent vehicle removal for failing to identify driver (discretionary forfeiture – post-conviction)</p> <p>Would enable courts to issue forfeiture notice for vehicles involved in fleeing driver events where the register owner fails or refuses to provide information to identify the driver under section 118 of the LTA. This would result in the permanent taking of the vehicle and the proceeds from the sale generally remaining with the Crown.</p> <p>Retains requirement for courts to consider undue hardship.</p>	<p>Would be a significant sanction which may outweigh the possible rewards of committing the offence.</p> <p>There is evidence that indicates that targeting penalties to owners, increases offenders' perceptions that they will be identified and held to account.²⁷</p> <p>Enforcing penalties on vehicle owners may mean they take a more proactive approach to monitoring the use of their vehicle.²⁸</p> <p>Would prevent future offending with that vehicle as vehicle permanently removed.</p>	<p>Likely to engage s 21 of NZBORA, in relation to unreasonable search and seizure. May also raise issues in relation to s 25 and s 27.</p> <p>This is a severe penalty and would be a disproportionate response, when compared with other offences and penalties in the transport regime. For example, this would be more severe than the penalty for failure to stop.</p> <p>This proposal presents risks, especially in terms of proportionality where a registered owner who does not know or cannot prove who was driving may be subject to a significant penalty.</p> <p>Courts use the current discretionary confiscation power infrequently and there is a risk that this lever will not be used either.</p> <p>This will have a disproportionate impact in Māori, which will outweigh any potential road safety benefit.</p> <p>Would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare and other services.</p>	<p>YES / NO</p>

PROACTIVELY RELEASED BY TRANSPORT
TE MANATU WAKA MINISTRY

²⁷ Ibid.

²⁸ Ibid.

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

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TE MANATU WAKA MINISTRY OF TRANSPORT

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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TE MANATU WAKA MINISTRY OF TRANSPORT

²⁹ J Hatfield, T Senserrick, S Boufous, L Mooren, A Williamson, C Sakashita and S Job, Human factor considerations for a licensing point system, Transport and Road Safety (TARS) Research, School of Aviation, University of New South Wales, NZ Transport Agency research report 657 (2019), pp.66-67.

³⁰ Sakashita, C. Fleiter, J.J, Cliff, D., Flieger, M., Harman, B. & Lilley, M (2021). A Guide to the Use of Penalties to Improve Road Safety. Global Road Safety Partnership, Geneva, Switzerland, p.28; Watson, A., Kaye, S., Fleiter, J., & Freeman, J.E. (2020). Effectiveness of vehicle impoundment for high-range speeding offences in Victoria, Australia. *Accident Analysis and Prevention*, 145, Article number: 105690; DeYoung, D. J. (1999). An evaluation of the specific deterrent effects of vehicle impoundment on suspended, revoked, and unlicensed drivers in California. *Accident Analysis & Prevention*, 31(1-2), 45-53.



11 October 2022

OC220879 (Te Manatū Waka)

Hon Chris Hipkins

Minister of Police

Hon Michael Wood

Minister of Transport

Hon Kiritapu Allan

Minister of Justice

Action required by:

Wednesday, 19 October 2022

s 9(2)(f)(iv)

Purpose

To provide Ministers with a draft Cabinet paper outlining proposals relating to fleeing drivers, s 9(2)(f)(iv) for Ministerial consultation, prior to a final version of the Cabinet paper being lodged. This briefing also provides advice on potential timelines to progress this work.

Key points

- The attached draft Cabinet paper (**Appendix 1**) seeks approval to issue drafting instructions on a package of proposals to:
 - the identification of, and penalties for fleeing drivers;
 - s 9(2)(f)(iv)
 - s 9(2)(f)(iv)
- Departmental consultation will run concurrently with Ministerial consultation.
- Feedback is required by 18 October 2022 to allow for changes to be made to the final paper, prior to being lodged on 20 October 2022 for consideration at Social Wellbeing Committee (SWC) on 26 October 2022.
- Draft Regulatory Impact Statements for fleeing driver s 9(2)(f)(iv) proposals are attached (**appendix 2 and 3**). These are currently progressing through joint panels and the final versions will be provided alongside the final Cabinet paper, it is likely that these will be updated to include additional data.

- A Supplementary Analysis Report was prepared for initial work under the Criminal Activity Intervention Legislation Bill. This Report is attached (**appendix 4**) and will cover the s 9(2)(f)(iv) [REDACTED].

- If Cabinet decides to progress these proposals, a new Land Transport (Road Safety) Bill will be required s 9(2)(f)(iv) [REDACTED]

[REDACTED]

Recommendations


We recommend you:

- | | | |
|---|---|----------|
| 1 | Agree to carry out consultation between the period of 12-18 October with your Ministerial colleagues | Yes / No |
| 2 | Provide feedback on the Cabinet paper by 18 October | Yes / No |
| 3 | Provide feedback on the proposed timelines | Yes / No |
| 4 | Note that it is recommended that secondary policy decisions to support implementation activities are delegated to the Minister of Transport. | Noted |



Gillian Ferguson
Director, Policy, NZ Police
11 / 10 / 2022

Hon Chris Hipkins
Minister of Police
..... / /



Megan Moffet, **Manager, Regulatory Policy, Te Manatū Waka**
11 / 10 / 2022

Hon Michael Wood
Minister of Transport
..... / /



Brendan Gage
General Manager, Criminal Justice,
Ministry of Justice

11 / 10 / 2022

Hon Kiritapu Allan
Minister of Justice

..... / /

Minister's office to complete:

Approved

Declined

Seen by Minister

Not seen by Minister

Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Gillian Ferguson, Director, Policy, NZ Police	s 9(2)(a)	
Megan Moffet, Manger, Regulatory Policy, Te Manatū Waka	s 9(2)(a)	✓
Brendan Gage, General Manager, Criminal Justice, Ministry of Justice	s 9(2)(a)	

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s 9(2)(f)(iv)

Decisions have been made on which proposals to progress to Cabinet

1 On 4 July 2022, Cabinet agreed that Ministers would report back on proposals to strengthen penalties and support New Zealand Police's (Police's) response to fleeing drivers s 9(2)(f)(iv) [CAB-22-MIN-0264 refers].

2 s 9(2)(f)(iv)

3 Further advice was provided to joint Ministers, with final decisions made on 29 September 2022 to narrow what options to progress through the October report back to address concerns relating to fleeing drivers, s 9(2)(f)(iv) [OC220790 and BR/22/66CH refers].

4 Options being progressed include:

4.1 Increasing penalties for fleeing drivers

4.1.1 Increase the maximum driver licence disqualification periods for first and second offences.

4.1.2 s 9(2)(f)(iv)

4.1.3 Enable permanent removal (forfeiture) of vehicles post-conviction (forfeiture).

4.2 Identifying fleeing drivers after the event

4.2.1 Fixing the financial penalty for failing to provide information at either \$2,500 or \$5,000.

4.2.2 Allowing Police to seize and impound a vehicle for 28 days for owners who fail or refuse to identify the driver of a fleeing driver event.

s 9(2)(f)(iv)

[REDACTED] s 9(2)(f)(iv) [REDACTED]

- 5 Te Manatū Waka has prepared Regulatory Impact Statements (**appendices 2 and 3**) to support the fleeing driver s 9(2)(f)(iv) [REDACTED]. Both documents recommend different options than what Ministers decided to progress.

There may be other drafting decisions to be made

- 6 As this work progresses, Te Manatu Waka - Ministry of Transport (Te Manatu Waka) will continue working with Waka Kotahi NZ Transport Agency to understand what changes may be required to the Motor Vehicle Register to support this work.
- 7 It is likely that if legislative amendments are required to support this package, they would be minor and technical. These would likely be covered by the current Cabinet paper approval to delegate the Minister of Transport the ability to issue drafting instructions.

Potential timelines for progression

- 8 As noted in prior advice [OC220790 and BR/22/66CH refers] these proposals will be unable to be included in the Criminal Activity Intervention Legislation Bill. This is due to the significance of the policy proposals remaining and that there would be insufficient time for drafting of these proposals to occur.

- 9 It is recommended that the work is progressed through a separate Land Transport (Road Safety) Bill, which could be given a category 5, with instructions provided to Parliamentary Counsel Office (PCO) in the year with the s 9(2)(f)(iv) [REDACTED]

10

s 9(2)(f)(iv) [REDACTED]

- 11 If Ministers wished for this drafting period to be shortened, there would be cascading effects on the availability of drafting resource for the wider transport regulatory work programme e.g. the Land Transport Management Act (Congestion Charging) Amendment Bill, regulations to support the Waka Kotahi funding and fees review and/or the Land Transport Management (Public Transport Services) Amendment Bill.

12

s 9(2)(f)(iv) [REDACTED]

13

s 9(2)(f)(iv) [Redacted]

[Redacted]

s 9(2)(f)(iv) [Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
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TE MANATU WAKA MINISTRY OF TRANSPORT
PROACTIVELY RELEASED BY

s 9(2)(f)(iv) [Redacted]

[Redacted]

s 9(2)(f)(iv)



PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

APPENDIX 1: CABINET PAPER - RESPONDING TO FLEEING DRIVERS, s 9(2)(f)(iv)



PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

**APPENDIX 2: REGULATORY IMPACT STATEMENT - LEGISLATIVE PROPOSALS
TO IDENTIFY AND PENALISE FLEEING DRIVERS**

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s 9(2)(f)(iv)



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**APPENDIX 4 - SUPPLEMENTARY ANALYSIS REPORT: CRIMINAL ACTIVITY
INTERVENTION LEGISLATION BILL**

PROACTIVELY RELEASED BY
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[In Confidence]

Offices of the Ministers of Police, Transport and Justice
Cabinet

Responding to fleeing drivers s 9(2)(f)(iv)

Proposal

- 1 This paper seeks Cabinet's approval on proposals relating to:
 - 1.1 the identification of, and penalties for fleeing drivers;
 - 1.2 s 9(2)(f)(iv)
 - 1.3 s 9(2)(f)(iv)

Relation to government priorities

- 2 The proposals in this paper support the Government's manifesto commitments to keep up the pressure on tackling gangs, by ensuring New Zealand Police (Police) and other enforcement agencies have the resources and powers to disrupt and prosecute this offending.

Executive Summary

- 3 s 9(2)(f)(iv)
- 4 This is paired with an increase in fleeing driver events, with 8,673 up to 31 August 2022, which is already a substantial increase on last year's 6,757 events.
- 5 Post the change in operational policy in December 2020 to cease engaging in pursuits, Police have experienced challenges in identifying fleeing drivers post-event. Since this policy change, Police has identified, on average, only 34 per cent of all offenders.
- 6 This paper proposes a range of legislative proposals to increase existing penalties, introduce the ability to remove vehicles in certain circumstances, and provide Police with new enforcement tools. These proposals are not reliant on one another, so could be progressed in a range of combinations.
- 7 Evidence shows that more severe penalties do not lead to a reduction in criminal behaviour, however, penalties that emphasise loss e.g., of a licence (disqualification) or vehicle (impoundment) can be effective at reducing opportunities for reoffending. Any proposed increase to penalty levels could signal Parliament's position on the seriousness of these offences.

8 A number of these proposals carry significant implications for the Government's obligations under the *New Zealand Bill of Rights Act 1990* (NZBORA). However, two of the proposals, increasing the maximum licence disqualification periods for the first and second failing to stop offences ^{s 9(2)(f)(iv)}

[REDACTED] do not have NZBORA implications. The proposal to fix the financial penalty for failing to provide information also has limited NZBORA implications.

9 A number of these proposals also carry implications for the Government's obligations under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. Māori and Pasifika are over-represented in fleeing driver events and gang statistics, and as such, these proposals are likely to have a disproportionate impact on Māori and further increase their representation within the criminal justice system.

10 We propose to give effect to these proposals through a new Road Safety Bill, which we propose to introduce in early 2023, following final confirmation by the Cabinet Legislation Committee.

11 ^{s 9(2)(f)(iv)}

[REDACTED]

Background

12 On 8 June 2022, the Cabinet Priorities Committee (CPC) discussed several initiatives to specifically respond to gang harm [CPC-22-MIN-0013 refers]. At CPC, Ministers expressed concerns that current fleeing driver penalties are insufficient, particularly in relation to disqualification periods for people who fail to stop for Police. On 4 July 2022, further advice on fleeing drivers was provided to Cabinet on strengthening penalties and supporting Police's response to fleeing drivers and ^{s 9(2)(f)(iv)}

[REDACTED]

13 Cabinet invited the Minister of Police, in consultation with the Minister of Justice and the Minister of Transport, to report back to Cabinet on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22- MIN-0264 refers].

14 ^{s 9(2)(f)(iv)}

[REDACTED]

15 ^{s 9(2)(f)(iv)}

[REDACTED]

s 9(2)(f)(iv)

Wider youth engagement work is underway to prevent and address youth offending

- 16 There has been increasing concern regarding youth disengagement and the link between this and youth offending. Responding to this, we have now established a Ministerial Group on Youth Engagement. This work has a long-term, prevention and early intervention focus. Responses are also underway to respond to children and young people with the more complex needs that the youth justice system is not working for.
- 17 Within this work is Kotahi Te Whakaaro, an initiative aimed at reducing youth crime, which delivers an immediate and coordinated cross-agency response to tamariki under 14 years involved in dangerous vehicle related offending (including ram raid incidents). All children (under 14) who are apprehended as a result of a fleeing driver and/or ram raid or other serious offending who live in South Auckland are referred on to the Kotahi Te Whakaaro initiative.
- 18 As at 17 October 2022, the initiative in South Auckland is supporting 62 tamariki and 140 siblings, taking a whole of whānau approach to prevent escalation into the youth justice system. The initiative began expansion into West Auckland on 10 October and work is underway to expand it to 14 – 17 year olds.

Part One: Identifying, and increasing penalties for, fleeing drivers

Background

Fleeing driver events

- 19 Police routinely signal drivers to stop and while the vast majority comply there is an increasing group of drivers who do not, and then engage in unsafe driving in an attempt to evade apprehension. If the driver fails to stop, but does not speed away, Police will follow them and catch them safely. These instances usually occur when the driver is distracted and has neither seen nor heard the siren or flashing lights.
- 20 A fleeing driver event occurs when a driver fails to stop or to remain stopped when required by Police, or a driver flees as a result of Police presence, whether signalled to stop or not.¹ Fleeing driver events undermine the road safety regulatory system and make it difficult to keep communities safe, as they interfere with Police's ability to carry out appropriate enforcement action. Fleeing drivers may also engage in offences such as dangerous driving, which

¹ The main reasons Police initially signal drivers to stop are speeding, suspected criminal offending, dangerous / reckless driving, suspicious vehicle behaviour, fault on vehicle, road rule breach, suspected drunk driving and avoiding a checkpoint.

pose serious safety risks to other road users in the event of a crash, potentially causing serious injuries, or death.

- 21 The overarching trend is of an increase in fleeing driver events; with 8,673 events from January 2022 to 31 August 2022, which is already a substantial increase on last year's 6,757 events. While Police changed its pursuit policy and recording practice in December 2020, this does not wholly account for the increase. This is evidenced by the fact there was not a sudden increase in fleeing drivers immediately following the policy changes in December 2020 but rather a continuation of the overarching trend of growth over the last ten years.
- 22 The revised policy places more emphasis on post-event investigations than pursuing fleeing drivers. This change has had significant safety gains. There have been three deaths since the policy change in December 2020; with none of these drivers being actively pursued. In comparison, there were 63 fleeing driver pursuit related deaths in the ten years prior to the policy change (2010 – 2020). These safety gains are critical to maintain but it means post-event investigations are essential for identifying drivers so they can be held to account. Police is, however, facing challenges identifying fleeing drivers under current legislative and operational settings.²
- 23 In the year prior to the Police pursuit policy change in December 2020 (November 2019 – November 2020), Police was identifying on average 52 percent of all offenders. Since December 2020 (December 2020 – July 2022), Police has identified on average 34 per cent of all offenders.
- 24 Additional legislative tools could support Police to identify fleeing drivers in post-event investigations, which would better enable fleeing drivers to be held to account and improve the enforceability of fleeing driver offences.

Offences and penalties

- 25 Under the *Land Transport Act 1998* (LTA) there are two related offences concerning fleeing drivers:
- 25.1 It is an offence to a person to “flee” when requested to stop. The penalty is a fine up to \$10,000, mandatory licence disqualification, and for third and subsequent offences, possible imprisonment. In certain circumstances, the vehicle must be confiscated if offences are committed within four years of previous qualifying offences (under the *Sentencing Act*).
- 25.2 If there is a fleeing driver event, Police has the power (under section 118(4) of the LTA) to request the registered owner or hirer of a vehicle involved in a fleeing driver event to immediately give all information that may help identify the driver. It is an offence if that person, without

² Identification often rests on the Motor Vehicle Register (the Register), however, there are certain limitations in the Register that can impede this process. While the registered person transfer process requires a new registered person of a vehicle to update their details, some vehicles are registered to “unknown” or have incorrect addresses associated with vehicles. The registered person may also not be the owner or have day-to-day control of the vehicle.

reasonable excuse, fails or refuses to provide this information immediately, or provides false or misleading information. The penalty is a fine up to \$20,000.

- 26 In addition, Police may impound³ a vehicle for 28 days if they believe on reasonable grounds that a person driving the vehicle has failed to stop (or remain stopped) when requested. They may then release the vehicle to the owner if satisfied that:
- 26.1 the owner was not the person driving the vehicle when the vehicle failed to stop (or remain stopped); and
 - 26.2 the owner has provided all information in their possession or obtainable to them which may lead to the identification and apprehension of the driver of the vehicle.
- 27 Where Police have impounded a vehicle, they must release it if they do not press charges at the end of the impoundment period. The owner of the vehicle is then liable for charges for the towage and storage of the vehicle.
- 28 If a registered person of a vehicle can prove that their impounded vehicle was stolen or converted at the time that it was impounded, there are appeal provisions under s102⁴ and s110⁵ of the LTA for the vehicle's release to the registered person. These provisions also allow for appeals in the case that a registered person did not know that a driver was unlicensed or disqualified when using their vehicle, and could not reasonably have been expected to know this.
- 29 Strategies that increase offenders' perceptions that they will be apprehended are more likely to influence behaviour and reduce offending. There is also evidence favouring the effectiveness of swift sanctions. It is worth noting that there is no evidence that more severe penalties lead to a reduction in criminal behaviour. Rather, the evidence indicates that the *certainty* of apprehension is a much more effective deterrent than increasing the severity of punishment, which does little to deter offending.

Increasing penalties for fleeing drivers

- 30 We propose three changes to increase the penalties for fleeing drivers, which could be progressed separately or as a package:
- 30.1 an increase to the maximum driver licence disqualification periods for first and second offences;

³ **Impoundment** results in the temporary loss of the vehicle. Once the impoundment period is up, the owner may collect it, but may be required to pay for the towage to the impoundment yard and its storage at the yard for the duration of the impoundment.

⁴ Appeal via Police

⁵ Appeal via District Court

30.2

s 9(2)(f)(iv)

30.3 to enable courts to issue forfeiture orders post-conviction, rather than confiscation orders.

31 The above options would send a stronger message to perpetrators that fleeing Police will have severe consequences. They could also reduce opportunities for re-offending by increasing disqualification periods or removing access to the vehicle involved in the event. Stronger penalties would acknowledge the danger this behaviour creates for other road users and Police.

Increase the maximum driver licence disqualification periods for first and second offences.

32 Firstly, we propose to increase the maximum licence disqualification periods for the first and second failing to stop offences:

32.1 A first failing to stop offence (committed while speeding or driving dangerously) would receive a mandatory disqualification of six months to one year (rather than a set period of six months). The current approach of no disqualification for first offence without speeding or driving dangerously would continue.

32.2 A second failing to stop offence (under any circumstances) would receive a mandatory disqualification of one to two years (rather than a set period of one year).

32.3 Third or subsequent offences would remain at a mandatory disqualification period of two years as the period is already higher than comparable offences.

33 These increases would signal the seriousness of fleeing from Police, particularly if coupled with activities to promote awareness of the penalty increase. It may also reduce the likelihood of reoffending by some disqualified people, as it limits their ability to drive for a lengthier period. This is supported by evidence that suggests penalties that emphasise loss (e.g., of a licence/vehicle) can be effective at changing behaviour.

34 However, officials note that this option may have a limited general deterrent effect.⁶ Recent research by the Evidence-Based Policing Centre on fleeing drivers indicates that increasing penalties for failing to stop may only have a limited effect on offending. This is particularly so given that fleeing drivers tend to make snap decisions in the heat of the moment, rather than careful weighing of options.

⁶ General deterrence refers to the public having a perception that those who break the law will be caught and incur a penalty. Specific deterrence refers to those who have been caught, and the penalty is enough to prevent them from reoffending.

- 35 There are no NZBORA implications for this option, as no protected right is prima-facie engaged.
- 36 This option will likely adversely impact Māori and Pacific peoples, and people without access to other transport options. Although court discretion may help to mitigate some of this impact, for example the court could substitute disqualification with a community-based sentence.

s 9(2)(f)(iv)

[Redacted]

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s 9(2)(b)(i)

s 9(2)(f)(iv)

[Redacted]

s 9(2)(b)(i)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

[REDACTED]

Enable permanent removal post-conviction (forfeiture)

- 49 Currently the courts may issue a confiscation order under section 128 of the *Sentencing Act* for a vehicle involved in a fleeing driver event. The court must issue a confiscation order if a second qualifying driving offence (which does not need to be a second fleeing driver event) is committed within a four-year period of the first. When a confiscated vehicle is sold, the owner may receive some of the proceeds as per the *Sentencing Act*.
- 50 This option would provide the Court the ability to issue a forfeiture order instead of a confiscation order. This would mean that the proceeds of the sale would likely remain with the Crown. It would retain the ability for the court to consider undue hardship, and the current review and appeal mechanisms. In terms of operational feasibility, this option would be similar to the status quo as the ability of the courts to confiscate vehicles already exists.
- 51 If used, this would be a significant sanction, as offenders could have their vehicle permanently removed, and would not get any proceeds from the sale back. The permanent removal would highlight the seriousness of this type of offending. The possibility of permanent loss of their vehicle could also change behaviour (although any deterrent effect would be limited) and increase road safety. However, it is unlikely to have an immediate deterrent effect on current offending. It may instead lead people to flee more often and in a more dangerous manner to avoid losing their car.

52 It would also be a disproportionate penalty when compared with other offences and penalties in the transport regime. Forfeiture is usually reserved for high end offences (e.g., those with a maximum term of five years' imprisonment). Given that courts already use confiscation orders infrequently, they are unlikely to use stronger forfeiture powers.

53 s 9(2)(h)

Identifying fleeing drivers after the event

54 We propose two changes to assist Police in identifying fleeing drivers after the event, which could be progressed separately or as a package:

54.1 amending the financial penalty for registered vehicle owners for failing to provide information by fixing the penalty at either \$2,500 or \$5,000, or setting a range with a fixed minimum \$1,000 and a fixed maximum of \$20,000;

54.2 allowing Police to seize and impound a vehicle for 28 days for owners who fail or refuse to identify the driver of a fleeing driver event.

55 Targeting penalties to vehicle owners may increase offenders' perceptions that they will be identified and held to account. This could result in reduced offending and enhance road safety.

Fixing the financial penalty for failing to provide information

56 At present, registered vehicle owners who fail or refuse to disclose the identity of a fleeing driver can, upon conviction, receive a fine of up to a maximum of \$20,000. Between 2018 and 2021, the highest fine issued has been \$5,000, with a median fine of \$600. This proposal would remove court discretion and set a fixed fine of either \$2,500 or \$5,000, or set a range with a fixed minimum of \$1,000 and a fixed maximum of \$20,000.

57 This option may provide an additional incentive for vehicle owners to provide information to Police. Enforcing penalties on vehicle owners may also mean they take a more proactive approach to monitoring the use of their vehicle. It would also increase the likelihood that Police would be successful in gaining information from owners of vehicles used in offending. This would aid in Police's investigation into who was driving the vehicle at the time of the offending taking place.

58 If individuals likely to offend have a perception that the owner of the vehicle used for offending is more likely to provide information to Police, this may increase their perception that they would likely be apprehended, and therefore reduce offending.

59 While a \$5,000 fixed fine was the initial option considered, a \$2,500 fixed fine would be more consistent with the Effective Transport Financial Penalties Framework and Tool, which Te Manatū Waka uses to evaluate all transport financial penalties. A range of \$1,000 to \$20,000 would not be consistent with the Effective Transport Financial Penalties Framework and Tool.

60 If Cabinet were to progress with a fixed fine, advice from officials is that this option would be inconsistent with the *Legislation Design and Advisory Committee 2021 guidelines* (LDAC Guidelines), which say that legislation must state the maximum fine.⁸ A range with a minimum amount would still present issues, as the LDAC guidelines also recommend against setting minimum penalties in legislation because it limits the courts' ability to impose a sentence appropriate to the particular case, and it may also be seen as contrary to the principle of the separation of power and judicial independence.⁹

61 Officials note that a fixed penalty level could be an outlier in the offence and penalty regime, and that there were no known cases of penalties that did not provide a level of discretion for judges to consider financial hardship, the circumstances of the offending

62 This option would remove the ability for the Court to set the penalty at an appropriate level for the circumstances of the offending and the ability of the offender to pay.

63 s 9(2)(h)



Allow Police to seize and impound a vehicle for 28 days for owners who fail or refuse to identify the driver of a fleeing driver event

64 Police currently has the power to seize and impound a vehicle for 28 days, if the officer believes on reasonable grounds that a person driving vehicle has failed to stop as required under the LTA. However, Police does not have the power to seize and impound a vehicle where the owner of a vehicle fails to comply with a request to provide information that may lead to identifying and apprehending the driver of the vehicle.

65 This proposal would explicitly provide Police the power to seize and impound (or continue to hold an already impounded vehicle) where the owner does not comply with a request for information under section 118(4) LTA. Police would need to have reasonable belief that impounding the vehicle is necessary to

⁸ Legislation Design and Advisory Committee Guidelines 2021, pg 126 <http://www.ldac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition-v2.pdf>.

⁹ *ibid.*

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prevent a threat to road safety. This would be established by taking the action and considering the factors set out in the scenarios below

	Action	Factors to consider
1	<p>Police uses the number plate of the vehicle involved in the fleeing driver event to identify the registered owner. Police follows-up with the owner to establish who was driving the vehicle at the time of the fleeing driver event.</p> <p>This is done using standard questioning to establish facts. For example, 'who has access to this vehicle?', and 'do you know where the vehicle was?'</p>	<p>The information provided by the owner, together with the manner of the response (e.g., is the owner being helpful, evasive, or uncooperative) is considered to determine whether owner is complying with the request.</p> <p>If Police considers the owner is complying with the request (e.g. has provided information or is able to establish why they have no knowledge) no further action would be taken.</p> <p>If Police considers the owner is not complying with the request, e.g. refuses to cooperate, Police could decide to charge the owner with failing or refusing to identify the driver.</p>
2	<p>In order to impound a vehicle, Police needs to establish reasonable belief that there could be a threat to road safety, in addition to having already made the judgement that the owner has not complied with the request.</p> <p>Police checks the vehicle owner's history on the National Intelligence Application (NIA) to see whether there is evidence of other road safety related behaviour. Police considers other evidence gathered as part of the investigation, e.g. interviews with members of the public that indicate that owner may have been the fleeing driver.</p>	<p>If Police does not have any evidence to cause them to have reasonable belief that the vehicle is likely to be involved additional in behaviour that would endanger road safety, e.g. another fleeing driver event, the vehicle cannot be impounded.</p> <p>If Police has reasonable belief that the vehicle may again be involved in behaviour that would endanger road safety, Police could impound the vehicle for 28 days.</p>

- 66 This option may provide an additional incentive for vehicle owners to provide information to Police. By doing so, this increases the likelihood that Police would be successful in gaining information from owners about who was driving the vehicle at the time of the offending, which may result in a higher number of case resolutions.
- 67 Furthermore, the risk of losing a vehicle for 28 days has been shown to influence driver behaviour and have positive road safety outcomes. The power to impound vehicles for 28 days was introduced in 1999 and has been an effective deterrent for those driving while disqualified or unlicensed and had positive road safety outcomes. Since this date, there has been a 29 per cent reduction in the proportion of crashes involving disqualified or unlicensed drivers, and a 34 per cent reduction in the number of detected driving while disqualified offences.
- 68 There is a risk that this option will be found non-compliant with NZBORA. In 2016 a similar proposal did not progress beyond the select committee stage, because a NZBORA section 7 report found it inconsistent with section 21: unreasonable search and seizure. The Attorney-General at the time proposed Police rely on the existing power to seize and impound a vehicle, if they believe, on reasonable grounds, that it was involved in a fleeing driver event.
- 69 The Attorney-General also found that impounding a vehicle in relation to failure or refusal to provide information would not be rationally or proportionately connected to the primary purpose of Police vehicle impoundment, which is road safety.⁵ To help this connection, if progressed, the Attorney General proposed to include a limb in the section 118(4) power, which requires Police to form a reasonable belief that impounding the vehicle is necessary to prevent an imminent threat to road safety.
- 70 This current proposal requires Police to form a reasonable belief that impounding the vehicle is necessary to prevent a threat to road safety in acknowledgment of the Attorney General's concerns. It is not proposed to include the word imminent, as Police do not consider this to be operationally practical because the vehicle is unlikely to be being driven at the time.
- 71 This reformulation of the Attorney-General's proposed limb would better connect the power to the purpose of road safety and would mean that the power could actually be applied in practice. However, there is a risk that it may not be considered rationally connected enough to the purpose to sufficiently mitigate the NZBORA concerns and that it may not mitigate the Attorney-General's concerns regarding the proportionality of the penalty.

s 9(2)(h)



s 9(2)(h)

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s 9(2)(f)(iv)

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Financial Implications

119 We expect any additional costs to the Crown (from criminal and forfeiture cases due to the proposed policies) will be absorbed within baselines. This will in part rely on prosecutorial discretion, and on the increased baselines as announced for Budget 2022. We note any increase in forfeiture is likely to

have a minor increase to the Proceeds of Crime Fund, the exact impact of which Officials have not yet had time to model.

- 120 We expect that the proposal to expand the qualifying offences for Police impoundments of vehicles for 28 days, ^{s 9(2)(f)(iv)} [REDACTED], may increase the demand for the current rebate for abandoned vehicles (estimated 10 to 15 per cent of impoundments). The recently updated rebate level is set at \$253, and officials estimate that the total amount paid for the rebate may increase significantly. ^{s 9(2)(b)(ii)} [REDACTED]

- 121 ^{s 9(2)(f)(iv)} [REDACTED]

Legislative Implications

- 122 Some of these proposals are related to those of the Criminal Activity Intervention Legislation Bill (CAIL Bill), which has just been referred to Select Committee. A Supplementary Order Paper would be needed to include the legislative changes in this paper within the CAIL Bill.
- 123 The significance of the remaining proposals and the policy scope of the CAIL Bill mean that such an approach is not suitable. The current amendments in the CAIL Bill were agreed to by Business Committee as out of scope provisions that could nonetheless proceed in an Omnibus Bill. Therefore, further Business Committee approval would be required to these amendments being included in the CAIL Bill by SOP. Officials would also not be able to draft amendments in time prior to the departmental report, likely to be due in mid-November.
- 124 Adding the proposals in this paper to the CAIL Bill would also preclude public engagement through the Select Committee process, as submissions on the CAIL Bill closed on 26 October 2022.
- 125 However, there is currently no other alternative vehicle for these proposals on the Legislation programme. ^{s 9(2)(f)(iv)} [REDACTED]

- 126 ^{s 9(2)(f)(iv)} [REDACTED]

Impact Analysis

Regulatory Impact Statements / Supplementary Analysis Reports

127 Two Regulatory Impact Statements have been prepared, one for the fleeing driver policies (**Appendix 1**) ^{s 9(2)(f)(iv)} [REDACTED] ^{s 9(2)(f)(iv)} [REDACTED] Each of these is annexed to the Cabinet paper.

128 The Regulatory Impact Statements have been reviewed by a panel of representatives from Te Manatū Waka, New Zealand Police, and the Ministry of Justice. They have been given a 'partially meets' rating against the quality assurance criteria. These were assessed as not being able to achieve a 'meets' rating largely because appropriate consultation was not possible in the time available, meaning all feasible options could not be canvassed or considered, limiting the proposed options to legislative change. These have been completed in the unusual circumstance of a decision already having been made, the analysis of the options presented is sound. This review was subject to some additional explanation of affected populations (namely in the towage and storage sector) and some agreed-upon drafting changes.

Climate Implications of Policy Assessment (CIPA)

129 The CIPA team has been consulted and confirms that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Population Implications

130 The proposals within this paper will likely disproportionately impact Māori and Pacific people and lower and socio-economic groups. This includes offenders, their families (including dependents such as children, kaumātua and the elderly), and whānau.

131 The proposals may also have greater impact on rural communities where other forms of transport are less available.

132 The removal of vehicles, whether it be through impoundment, confiscation, or forfeiture will have a greater impact on people without access to other transport options, and lower socio-economic groups, who may need their vehicle to access key amenities, including employment, the supermarket, healthcare, and other services.

133 Financial penalties would also have a greater impact on lower socio-economic groups as they may be unable to pay and be referred to debt collectors, which could have a significant impact on their families and lives.

134 Māori and Pacific people are over-represented in fleeing driver events and related offending and therefore are likely to be disproportionately impacted by

the proposals. This is especially so for the proposals resulting in the removal of vehicles through impoundment, confiscation or forfeiture.

Impact on Māori

Te Tiriti o Waitangi analysis

- 135 The proposals interact with the government's obligations under Te Tiriti o Waitangi, particularly the principles of active protection and partnership, and the lack of engagement with iwi and hapū creates a barrier to the exercise of rangatiratanga guaranteed in Te Tiriti o Waitangi.
- 136 As the proposals will disproportionately impact Māori, under the active protection and partnership principles, there is a strong Te Tiriti o Waitangi based argument that Māori should be consulted on the proposals given they are likely to disproportionately affect Māori. However, due to time constraints, officials have not consulted Māori on any of the proposals in this paper.

Māori, land transport, and the penalty regime

- 137 Māori already experience transport disadvantage suffering various forms of exclusion such as geographic, physical, and economic.¹² A shift in the penalty regime and, specifically, vehicle confiscation or forfeiture will further exacerbate this exclusion and its resulting social and wellbeing factors to which it contributes.
- 138 Māori are charged with crimes between two and three times more than the general population and are overrepresented at every stage of the criminal justice system. Research also shows that most offending for Māori is traffic or vehicle regulatory related (reported in 2018 this accounted for 7.6 per cent of all offending by Māori; 23 per cent of reoffending by Māori between mid-2015 and mid-2016 was related to traffic offences).¹³
- 139 While work is underway across the sector to better understand the disproportionate impacts on Māori in particular, existing institutional biases and systemic racism mean that new offences or Police powers may be more likely to be used against Māori regardless of how they are targeted or intended.
- 140 Evidence shows that Māori are more likely to be forced into car ownership than non-Māori. One of the main reasons being because many Māori live and work in areas that are not well served by public transport. Forced car ownership and usage contributes to social harms, including worsening financial hardship and debt.

¹² 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

¹³ Waka Kotahi NZ Transport Agency. (2021). He pūrongo whakahaumaru huarahi mō ngā iwi Māori: Māori road safety outcomes

Māori access to the Graduated Driver Licensing System and its impacts

- 141 Additionally, fewer Māori than non-Māori have a driver's licence,¹⁴ with the most common reason being financial barriers.¹⁵ Without a car or other transport option, Māori are disproportionately hindered from accessing key amenities, including vital services for health. More than six per cent of Māori could not visit a GP due to lacking transport during the 2019/2020 period.¹⁶
- 142 Access to driver's licences continues to prevail as the single most significant land transport issue. 70 per cent of jobs require a driver license as a mandatory qualification for potential employees¹⁷, hence significantly impacting the likelihood of financial capacity for a non-licence holder to meet any financial penalty.
- 143 Not having a driver's licence also has wider financial implications, such as access to employment, the supermarket, and other services. It can also have wider social implications, as young Māori are more likely to drive illegally prior to receiving a licence¹⁸ which is a common entry into the criminal justice system.¹⁹
- 144 Forfeiture options could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Although the Court can provide relief on grounds of hardship or in the case of security interests.

Human Rights

- 145 The proposals within this paper may have implications for human rights under NZBORA. ^{s 9(2)(h)}
- [REDACTED]
- [REDACTED]
- [REDACTED]

¹⁴ Sweeney, M., Breitenmoser, T., & Dickson, I. (2022). A pathway towards understanding Māori aspirations for land transport in Aotearoa New Zealand (Waka Kotahi NZ Transport Agency research report 688)

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ The Auckland Co-Design Lab, *The Case for Change* (2016 Full Report). Manukau, New Zealand: Auckland Co-design Lab. April, 2016.

<http://static1.squarespace.com/static/55ac5ee5e4b08d4c25220f4b/t/5716da31e707ebc3b5307040/1461115727038/DLCaseforChange>

¹⁸ Ibid.

¹⁹ Ibid.

146 s 9(2)(h) [Redacted]

Agency views

New Zealand Police

147 Police supports all of the options in proposed in this paper, with the exception of s 9(2)(f)(iv) [Redacted]

148 In terms of fleeing drivers, Police support penalties that result in loss of a licence or vehicle as they are more likely to influence behaviour. Therefore, Police supports increasing driver licence disqualification periods and enabling courts to issue forfeiture notices for vehicles. These penalties will send a stronger signal to owners and drivers that there will be severe outcomes if they choose to flee.

149 Targeting penalties to owners is likely to incentivise them to be more responsible with their vehicles and identify fleeing drivers as part of post-event investigations. For this reason, Police supports the proposal to enable a vehicle to be impounded for up to 28 days where a vehicle owner fails to provide information. In relation to the fixed fine options, Police supports the proposal to impose a fixed minimum fine of \$1,000 up to a maximum of \$20,000 (recommendation 8.3). This proposal will ensure that more significant fines are imposed by the courts as well as retain the Courts' ability to impose a higher fine on a case by case basis.

150 s 9(2)(f)(iv) [Redacted]

151


s 9(2)(f)(iv)



Te Manatū Waka

152

Te Manatū Waka considers that the NZBORA implications, and the effectiveness and implementation challenges of the various proposals are likely to outweigh potential road safety benefits. s 9(2)(f)(iv)



153

Of the options relating to fixing the financial penalty for failure to provide information, Te Manatū Waka prefers the range option (recommendation 8.3) over the two fixed fine options. When compared to the other two options, this option would provide greater Court discretion, would be more in line with comparable offences and penalties, and would be a less disproportionate penalty. However, Te Manatū Waka would like to note that this option would be inconsistent with LDAC guidelines, which says that legislation must state the maximum fine, and recommends against setting minimum penalties in legislation.

154

s 9(2)(f)(iv)



Ministry of Justice

155

Of the options relating to amending the financial penalty for failure to provide information, the Ministry of Justice prefers the range (recommendation 8.3) over the two options involving a fixed fine, noting that this option still contains a mandatory minimum of \$1,000 which is undesirable and recommended against by the LDAC Guidelines. This option would allow greater court discretion in setting the appropriate fine, is more in line with comparable offences and is less disproportionate compared to the other options.

156

s 9(2)(f)(iv)



157 More generally the Ministry of Justice has concerns about both the BORA implications and the likely effectiveness of the various proposals.

Consultation

158 This paper has been developed jointly by Te Manatū Waka, the Ministry of Justice, and Police. The Crown Law Office, Treasury, the Department of Prime Minister and Cabinet, Te Puni Kōkiri and Waka Kotahi NZ Transport Agency have been consulted on the proposals contained in this paper.

159 There has been no consultation with Māori or affected parties such as towage and storage operators, despite the significant implications that these policies are likely to have on these groups.

160 We intend to engage with Te Arawhiti through the development of the Bill and will ensure that they are also engaged in developing public-facing material to aid with reaching affected parties.

Communications

161 Following final Cabinet decisions, we will determine which Minister/s are appropriate to lead this work and develop a communications package in support.

Proactive Release

162 We intend to release this Cabinet paper proactively, subject to any necessary redactions, in line with the requirements of Cabinet Office circular [CO (18) 4].

Recommendations

The Ministers of Police, Transport and Justice recommend that the Committee:

1 **note** that on 4 July 2022, Cabinet invited the Minister of Police, in consultation with the Minister of Justice and the Minister of Transport, to report back to Cabinet on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22- MIN-0264 refers];

2 s 9(2)(f)(iv) [Redacted]

3 s 9(2)(f)(iv) [Redacted]

Penalties for fleeing drivers

4 **agree** to amend the *Land Transport Act 1998* to increase the period of driver licence disqualification for a first or second offence of failing to stop or remain stopped as signalled, requested, or required, as follows:

- 4.1 for a first offence, from six months (current) to six months to one year (proposed);
- 4.2 for a second offence, from one year (current) to one year to two years (proposed);

5

s 9(2)(f)(iv)

6

agree to amend the *Sentencing Act 2002* to enable a Court to make an order that a vehicle be forfeited on conviction for offences relating to a failure to stop or remain stopped as signalled, requested, or required;

7

note that the agreement in recommendation 6 will replace the existing power of the Court to order a vehicle be confiscated on conviction for offences relating to a failure to stop, or remain stopped as signalled, requested or required.

Identification of fleeing drivers

8

agree to amend the *Land Transport Act 1998* to increase the penalty on conviction for failing, refusing, or providing false or misleading information to an enforcement officer under section 118(4) from a fine of up to \$20,000 to either

8.1 a fixed fine of \$2,500; or

8.2 a fixed fine of \$5,000; or

8.3 a range with a fixed minimum of \$1,000 and maximum of \$20,000 (Police's preferred option);

9

agree to amend the *Land Transport Act 1998* to allow an enforcement officer to seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds the person has failed, refused, or provided false or misleading information to a request under section 118(4), and if Police form a reasonable belief that impounding the vehicle is necessary to preserve road safety;

s 9(2)(f)(iv)

s 9(2)(f)(iv)

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s 9(2)(f)(iv)

[Redacted text block]

Other

18 s 9(2)(f)(iv) [Redacted text]

19 **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations above, including any necessary consequential amendments, savings and transitional provisions;

20 **authorise** the Minister of Police, Minister of Transport and Minister of Justice to make any further policy decisions that arise during the drafting process, provided they are consistent with the direction agreed by Cabinet;

21 **agree** to add a Road Safety Bill to the legislative programme for 2022 with priority 5: instructions to be provided to Parliamentary Counsel Office in the year;

22 **note** that this Cabinet paper will be proactively released, subject to redactions consistent with the *Official Information Act 1982*.

Authorised for lodgement

Hon Chris Hipkins
Minister of Police

Hon Michael Wood
Minister of Transport

Hon Kiritapu Allan
Minister of Justice

Appendices:

Appendix One: Regulatory Impact Statement - Legislative Proposals to Identify and Penalise Fleeing Drivers

s 9(2)(f)(iv)

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Regulatory Impact Statement: Legislative proposals to identify and hold fleeing drivers to account

Purpose of Document	
Decision sought:	This RIS provides advice to Cabinet on potential options to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers.
Advising agencies:	Ministry of Transport, New Zealand Police, and Ministry of Justice
Proposing Ministers:	Minister of Transport and Minister of Police
Date finalised:	11 October 2022
Problem Definition	
<p>Over the last decade, fleeing driver events have been steadily increasing in New Zealand. This is having road safety impacts, as these events pose serious safety risks to other road users.</p> <p>However, New Zealand Police (Police) is facing challenges identifying and apprehending fleeing drivers under current legislative and policy settings. This is preventing them from holding offenders to account and is undermining the land transport regulatory system.</p>	
Executive Summary	
<p>Cabinet invited the Minister of Police, in consultation with the Minister of Justice and Minister of Transport, to report back in October 2022 on proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264 refers].</p> <p>This Regulatory Impact Statement (RIS) outlines potential legislative options for amending the <i>Land Transport Act 1998</i> (LTA) to:</p> <ul style="list-style-type: none">penalise fleeing drivers; andidentify fleeing drivers. <p>s 9(2)(f)(iv)</p>	
Why are amendments needed?	
<p>Over the last decade, fleeing driver events have been steadily increasing in New Zealand. This is having road safety impacts, as these events pose serious safety risks to other road users.</p> <p>Police revised its pursuit policy in 2020, to place emphasis on post-event investigations rather than commencing or continuing a pursuit. While this change has had significant safety gains (which are critical to maintain), it means post-event investigations are essential for identifying drivers so they can be held to account.</p> <p>Police, however, is facing challenges identifying and apprehending fleeing drivers under current legislative and policy settings, when the registered person of a vehicle does not cooperate with Police.</p>	

Additional legislative levers could support Police to identify fleeing drivers in post-event investigations, which may better enable Police to hold fleeing drivers to account and improve the enforceability of fleeing driver offences.

The overall aim of the amendments is to enhance road safety. When drivers flee from Police, they are endangering the safety of their passengers, road users and Police.

Options considered

Officials have identified a range of options in two focus areas (penalising fleeing drivers and identifying fleeing drivers), which could be advanced separately or some in combination.

These options will be considered against the status quo.

Focus Area 1: Increasing penalties for fleeing drivers

- Option 1A: Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary due to the tiered penalty structure)
- Option 1B: Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences, as a maximum
- s 9(2)(f)(iv)
- Option 1D: Enabling permanent removal of vehicles post-conviction for failure to stop (forfeiture)
- Option 1E: Enabling permanent removal of vehicles without conviction (forfeiture or confiscation).

Focus Area 2: Identifying fleeing drivers

- Option 2A: Amending the financial penalty for failing to provide information to a fixed penalty
- Option 2B: Creating a liability for failing to stop for the registered person of a vehicle
- Option 2C: Allowing Police to seize and impound a vehicle for 28 days for the owner failing or refusing to identify the driver of a fleeing driver event
- Option 2D: Requiring permanent vehicle removal for failing to identify driver (mandatory confiscation for all offences – post-conviction)
- Option 2E: Enabling permanent vehicle removal for failing to identify driver (discretionary forfeiture – post-conviction).

Preferred option

Based on our criteria-based analysis, none of these options scored high than the status quo. Therefore, there is no preferred option. However, the following options have been identified to progress:

- 1A - Increasing driver licence disqualification periods for failure to stop offences
- s 9(2)(f)(iv)
- 1D – Enabling permanent removal post- conviction for failure to stop (forfeiture)
- 2A – Amending the financial penalty for failing to provide information to a fixed penalty
- 2C – Allowing Police to seize and impound a vehicle for 28 days for the registered person of the vehicle failing or refusing to identify the driver of a fleeing driver event.

Potential impact of options chosen to progress

The proposals are designed to support Police to effectively identify fleeing drivers and hold them to account. They may have a positive impact on road and community safety, and will signal and communicate the seriousness of the offending.

However, there are certain risks associated with the options chosen to progress, which could result in unintended consequences. For example, there is a risk with the proposals relating to impoundment, that they will exacerbate existing pressures on the stretched towage and storage sector. There is also a risk that some proposals, particularly options 1A and 2A, may have an operational impact on the justice system due to increased prison sentences, fines, and lengthier disqualification periods.

There are also *New Zealand Bill of Rights 1990* (NZBORA) implications with some of the options chosen to progress, s 9(2)(h)

A full assessment of the options can be found in section 2.

Stakeholders' views

The timeframes for officials to provide proposals to Cabinet meant it was not possible to undertake targeted stakeholder or public consultation.

However, research commissioned by the Evidence-Based Policing Centre (EBPC)¹ in 2020, provides some insight into the views of the public on fleeing drivers.

Public perceptions of Police pursuits of fleeing drivers

Based on EBPC-commissioned² research, members of the public, including those involved in fleeing driver events, have expressed a belief that if Police do not pursue, there would be less harm. However, most considered that not pursuing altogether would be problematic as it could result in reputational risk for Police. In particular, loss of respect and the perception that Police is not “doing their job”. There was also the view expressed that not pursuing could provide less of a deterrent for offending and as result lead to an increase in crime. These perceptions indicate the challenge for Police in balancing road safety outcomes with holding fleeing drivers to account.

¹ University of Canterbury. *Understanding the motivations of fleeing drivers: Media influences*. 9 November 2020. This research involved a total of 90 people across 12 focus groups in Christchurch, Auckland, and Gisborne that were differentiated by age and offending history. Gender = male (52 percent), female (47 percent), gender diverse (1 percent). Age = even split between the age groups under 25 years and 25 years and over. Ethnicity = Pākehā (44 percent), Māori (22 percent), Pacific peoples (3 percent), other ethnicities (11 percent), or not reported (19 percent).

² Ibid.

Public perceptions of fleeing driver offences and penalties

Based on EBPC-commissioned research,³ it appears that members of the public, including those involved in fleeing driver events, are generally unaware of the legal consequences for failing to stop for Police or think that consequences are less significant compared with penalties for other offending during a fleeing driver event (e.g. dangerous driving). There is a perception that the current punishment for fleeing drivers is inadequate and that harsher punishment would provide a greater deterrent.

Agency Feedback

The Ministry of Justice and New Zealand Police have been consulted with on this paper. Waka Kotahi NZ Transport Agency have been informed of this paper, but time has limited their ability to engage.

Limitations and Constraints on Analysis

Ministers directed officials to develop options to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264 refers]. Subsequently, the range of options are limited to status quo and legislative amendments.

Officials were further constrained by tight timeframes, driven by the desire from Ministers for a Cabinet report back by October 2022. This meant that a first-principles examination of legislative and non-legislative responses to fleeing drivers has not been undertaken.

Improving other aspects of the transport system may contribute to the successful identification of fleeing drivers. Police is currently reviewing its pursuit policy, with any potential changes considered by the end of the year. Waka Kotahi is giving consideration as to what solutions may exist to address concerns in relation to the Motor Vehicle Register. This work by Waka Kotahi could support the enforceability of legislative mechanisms to identify and penalise fleeing drivers.

Data

This RIS has been informed by evidence on fleeing drivers and operational feedback. It has also been informed by recent research with a focus on understanding the motivations of fleeing drivers, in particular:

- Evidence-Based Policing Centre, *Understanding the motivations of fleeing drivers – Te Ikarere - A youth perspective of Police pursuits* (June 2021) – This research involved interviews with 16 young people aged between 13 – 19 years. Young people self-identified as 7 Māori 2 Pacific peoples, 4 Māori/ NZ European, 1 Māori/NZ European/ Pacific peoples.
- Evidence-Based Policing Centre, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020) – This research was informed by literature reviews, studies of best practice intelligence, interviews and focus groups with offenders and the public and analysis of existing police data.
- University of Canterbury, *Understanding the motivations of fleeing drivers – Individual factors* (November 2020) – This qualitative research involved semi-structured interviews with 40 individuals who had been involved in a police pursuit, either as a driver or passenger. Approximately half of participants were under 20 and there was 40% of people identified as Māori and 48% as Pākehā and 13% as Pacific peoples.

³ University of Canterbury. *Understanding the motivations of fleeing drivers: Individual factors*. 9 November 2020.

- University of Canterbury, Understanding the motivations of fleeing drivers – Media influences (November 2020) – This research was informed by 12 focus groups of up to 8 people in Christchurch, Auckland and Gisborne. A total of 90 individuals participated across the focus groups.
- Evidence-Based Policing Centre, *Understanding the motivations of fleeing drivers – Literature review of youth motivations (September 2019)* – This research was a literature review.
- Evidence-Based Policing Centre, *Understanding the motivations of fleeing drivers – Relationships with other offending (December 2020)* – This research used the NZ Police Fleeing Driver Notification Database, which contains data collected from notification forms completed by staff. This involved 25,747 events recorded between 1 Jan 2013 and 5 May 2020.
- New Zealand Police and Independent Police Conduct Authority, *Fleeing Drivers in New Zealand: a collaborative review of events, practices, and procedures (March 2019)* – This research involved two samples of fleeing driver events from the 2017 calendar year. The Police sample included 191 events and the Independent Police Conduct Authority sample included 77 cases.

Some of the evidence provided in this RIS is caveated as there was a change of reporting requirements for fleeing driver events in December 2020. Police recording practices changed in December 2020 to include not only pursuit events and abandoned pursuit events but also events where the driver fled, and a pursuit was not initiated.

Consultation

Due to the timeframes for Officials to provide proposals to Cabinet and the direction to focus on the identification of legislative changes, consultation was not able to be undertaken with Māori, sector stakeholders, and the public.

What additional analysis of impacts on certain groups would you have liked to include?

Consultation with key Māori organisations, sector stakeholders, and the public would have better informed the analysis, including broader understanding of likely impacts, operational challenges, and unintended consequences.

What is the overall impact of these limitations and constraints on how confident Ministers can be when using this analysis to inform decisions?

The proposals are based on existing research and evidence on fleeing drivers and operational feedback. The proposals strengthen current penalties and address existing gaps in the land transport regulatory regime relating to fleeing drivers.

There may be alternative options that have not been considered due to timeframes and the lack of consultation, which would more effectively achieve the desired outcomes.

Although consultation was not able to be undertaken, the operation, use and impact of the existing regimes and powers the proposals sit within provide insight into their likely impact on both fleeing drivers and the wider community.

Responsible Manager

Megan Moffet
Manager
Regulatory Policy
Te Manatū Waka Ministry of Transport



19 October 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	Te Manatū Waka Ministry of Transport, Ministry of Justice, and New Zealand Police
Panel Assessment & Comment:	This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Te Manatū Waka Ministry of Transport, New Zealand Police, and the Ministry of Justice. It has been given a 'partially meets' rating against the quality assurance criteria. The RIS was assessed as not being able to achieve a meets rating largely because appropriate consultation was not possible in the time available, meaning all feasible options could not be canvassed or considered, limiting the proposed options to legislative change. Though the RIS has been completed in the unusual circumstance of a decision already having been made, the analysis of the options presented is sound. This review was subject to some additional explanation of affected populations (namely in the towage and storage sector) and some agreed-upon drafting changes.

PROACTIVELY REVIEWED BY TRANSPORT
TE MANATU WAKA

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

Fleeing driver events cause road safety harms

1. A fleeing driver event occurs when a driver fails to stop or remain stopped when required by Police or a driver flees as a result of Police presence whether signalled to stop or not.
2. Fleeing driver events undermine the land transport regulatory system and make it difficult to keep communities safe as they interfere with Police's ability to carry out appropriate enforcement action.
3. Fleeing drivers often engage in other road safety offences, such as dangerous driving, which pose serious safety risks to themselves and other road users. 30% of those charged with a first offence for failing to stop were also speeding or driving dangerously.
4. Fleeing driver events can result in serious injuries and death, to both those in the vehicle and other road users. The table below shows the harm caused by fleeing driver incidents from 2015 until 2021.

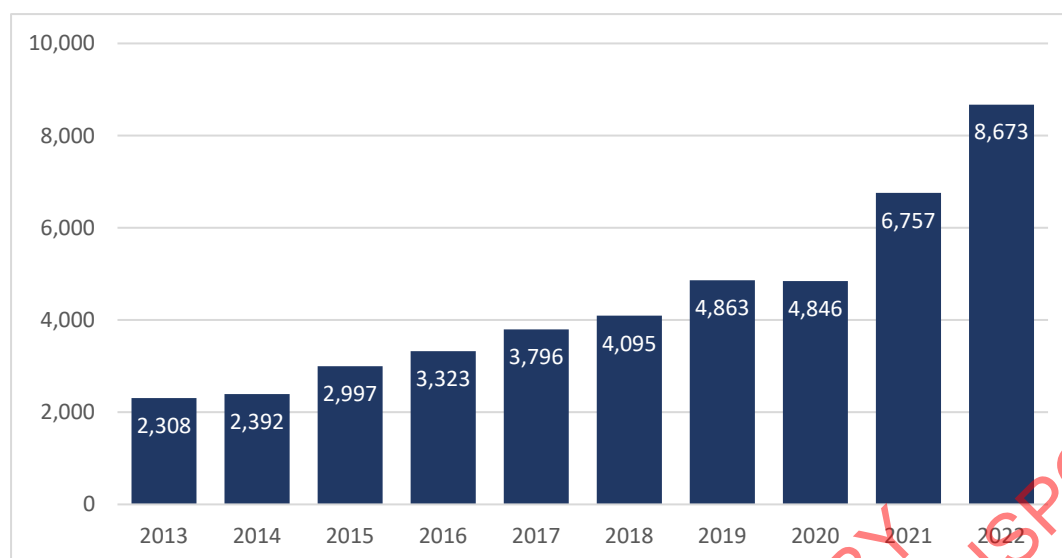
Table 1: Harm caused by fleeing driver incidents 2015 - 2021

	2015	2016	2017	2018	2019	2020	2021
Fleeing driver events	2,997	3,323	3,796	4,095	4,863	4,846	6,757
pursuits	2,997	3,205	3,676	3,974	4,721	4,421	1,347
Percentage of pursuits resulting in a crash	16.8%	17.3%	16.1%	14.8%	13.1%	11.5%	10.5%
Fatal fleeing driver events	2	5	11	8	6	2	1
Fatal pursuits	2	5	11	8	5	1	0
Injuries from pursuits	150	171	140	151	181	92	27
3 rd party deaths from fleeing driver events	0	0	0	1	3	0	0
3 rd party deaths from pursuits	0	0	0	1	3	0	0

Fleeing driver events are increasing

5. Over the last decade, there has been a steady increase in the number of reported fleeing driver events per year. There have been 8,673 fleeing driver events so far this year. This is already a substantial increase on last year's 6,757 events.
6. The table below shows the increase from 2013 until August 2022.

Table 2: Fleeing driver notifications 2013 – August 2022

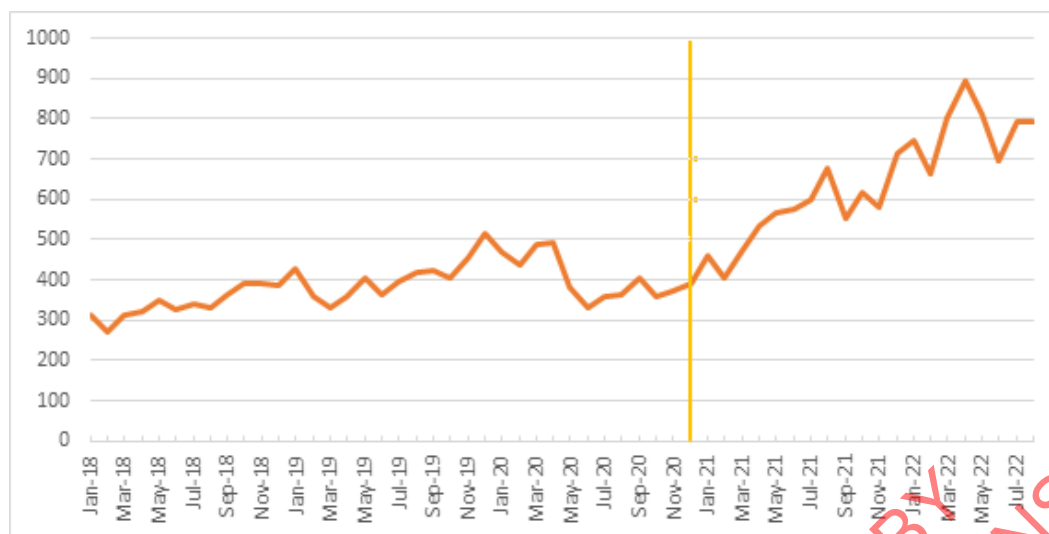


7. In December 2020, Police implemented a revised fleeing driver pursuit policy. Police now place emphasis on post-event investigations rather than commencing or continuing a pursuit. This followed the joint Police and Independent Police Conduct Authority (IPCA) collaborative review in 2019 that recommended changes to improve operational procedures and safety outcomes relating to fleeing driver events.⁴
8. Since the introduction of the revised pursuit policy, there have been positive road safety outcomes with fewer deaths (three people have died since the change, with none of these drivers being actively pursued) and serious injuries relating to fleeing driver events.⁵
9. At the same time, Police made changes to their recording practices to include not only pursuit events and abandoned events but also events where the driver fled but a pursuit was not initiated, resulting in increased recording of fleeing driver events. It is therefore hard to quantify the specific impact of the change in policy on fleeing driver numbers. The overarching trend over the long-term, however, is of an increase in fleeing driver events.
10. Table 3 below shows fleeing driver events by month January 2018 to July 2022 and includes a marker for the change in recording practice. As evidenced by Table 3, the change in event recording from December 2020 does not solely explain the significant increase in fleeing driver events. If the change in reporting practice was the reason behind the increase, there would have been a step-change in the monthly number of events recorded from January 2021, which did not occur.

⁴ Police and IPCA. *Fleeing drivers in New Zealand: a collaborative review of events, practices, and procedures* (March 2019).

⁵ For comparison, there were 63 fleeing driver pursued related deaths in the 10 years prior to the 2020 policy changes.

Table 3: fleeing driver events by month January 2018 – July 2022, NB: the yellow line marks the change in reporting practice



Identification of drivers after the fact presents significant enforcement challenges for Police

11. Police's pursuit policy now places more emphasis on post-event investigations than pursuing fleeing drivers. While this change has had significant safety gains (which are critical to maintain), it means post-event investigations are essential for identifying drivers so they can be held to account.
12. However, Police is facing challenges identifying and apprehending fleeing drivers under the current legislative and policy settings.
13. While Police currently has the power (under section 118(4) of the *Land Transport Act 1998* (the LTA)) to request the owner or hirer of a vehicle involved in a fleeing driver event to immediately give all information that may help identify the driver, often the registered person does not cooperate with Police. This may be because they do not want to incriminate themselves, or they want to protect someone else.
14. In the year prior to the Police pursuit policy change in December 2020 (November 2019 - November 2020), Police was identifying on average 52 percent of all offenders. Since December 2020 (December 2020 – July 2022), Police is identifying on average 34 per cent of all offenders.⁶

There is a public perception that fleeing drivers will not be caught or held to account

15. Evidence (from small-scale qualitative research) suggests there appears to be a view amongst offenders that there is little consequence for fleeing from Police, especially if they evade being caught at the time of the event.⁷ There is also a perception that any additional penalty for fleeing is insignificant, compared with penalties they may face for other offending during a fleeing driver event, which contributes to the motivation to flee.⁸

⁶ [Based on analysis of notifications in Police fleeing driver database as of May 2022.](#)

⁷ University of Canterbury. Understanding the motivations of fleeing drivers: Individual factors (9 November 2020); Police & Withbox. Te Ikarere, a youth perspective of Police pursuits (June 2021). The latter research involved engagement and interviews with 16 young people aged 13-19 years. Majority male (13 participants) and self-identified as Māori (14 participants).

⁸ Ibid.

16. Furthermore, recent EBPC commissioned research indicates that members of the public are generally unaware of legal consequences of fleeing from Police,⁹ and the severity of penalties for failing to stop for Police have little effect on offending.

Current penalties for failing to stop and remain stopped

17. The LTA sets out the Police powers that require a driver to stop and remain stopped (in section 114) and offence and penalty provisions (in sections 52A and 96) where a driver fails to do so and flees Police. The *Sentencing Act 2002* (the SA) also enables the courts to issue vehicle confiscation orders upon conviction for failing to stop offences (sections 128 and 129). The courts are required to issue mandatory confiscation orders in some circumstances.

18. Under the LTA, a registered person whose motor vehicle has been seized or impounded may appeal such action to the:

- Police, under section 102, and
- the District Court, under section 110 (if the registered person has unsuccessfully appealed under section 102).

19. Even though young offenders are disproportionately represented, adult fleeing drivers (aged 18 years or older) account for the majority of identified offenders.¹⁰ Adult fleeing drivers are subject to current fleeing driver offence and penalty settings.

20. The severity of penalties increases depending on whether it is the first, second, or third or subsequent time the driver has failed to stop. This is intended to act as a deterrent and reflects the low tolerance for repeat behaviour. The current maximum penalties for the driver are set out below.

Table 4: Current penalties for failing to stop and remain stopped

	Maximum fine	Maximum imprisonment	Licensing sanctions	Vehicle removal
First offence	\$10,000	N/A	Six-month disqualification (mandatory if driving dangerously or speeding)	28-day impoundment (discretionary) confiscation post-conviction (discretionary)
Second offence			One-year disqualification (mandatory)	28-day impoundment (mandatory)
Third or subsequent offence		Three months	Two-year disqualification (mandatory)	confiscation post-conviction (mandatory if committed within four years of previous offence)

⁹ EBPC *Understanding the motivations of fleeing drivers: Media influences* (November 2020).

¹⁰ EBPC. *Understanding the motivations of fleeing drivers: Relationships with other offending* (December 2020).

21. The current penalty settings stem from amendments to made to fleeing driver provisions through the Land Transport Amendment Act 2017. The amendments were intended to deter drivers from fleeing and reduce repeat offending.¹¹
22. The 2017 changes did not result in significant increases to the penalties. The key changes were to increase mandatory driver licence disqualification periods (previously 3 months for first and second offences and 12 months for third and subsequent offences) and introduce a mandatory rather than discretionary vehicle impound period of 28 days for second and subsequent offences. It is difficult to quantify what effect (if any) these changes had on fleeing driver numbers, given changes to operational policy and practice during this period (e.g., better recording of all fleeing driver events, not just pursuits).

Young fleeing drivers

23. These settings do not apply to younger fleeing drivers (aged 10-17 years) as their offending is typically addressed through the youth justice system, with a few exceptions.
24. A Youth Court Judge can transfer a proceeding under s 283(o) of the *Oranga Tamariki Act 1989* (OT Act) for sentencing in the District Court (noting this could only be a 15 – 17-year-old). Section 284(1A) of the OT Act outlines the factors the Judge must take into account, being the seriousness of offending, the criminal history of the young person, the interests of the victim, and risk posed to other people. In terms of fleeing drivers, as this is not considered a major offence, this would likely occur if a person was charged for failing to stop and remain stopped in addition to more serious charges (e.g. unlawful taking of vehicle and burglary). In this case, it would be the other offences the Judge would weigh up when considering transferring the proceedings.
25. If a young person was jointly charged with an adult, then section 277(6) of the OT Act would apply. This would result in a judge-alone joint trial happening in the Youth Court unless it was in the interests of justice to hold it in the District Court. This would be a high threshold to cross given the level of penalty.

Current offences and penalties for refusing to provide information or providing false or misleading information

26. Under section 118(4) of the LTA, Police can request the owner or hirer of a vehicle involved in a fleeing driver event to immediately give all information that may help identify the driver. It is an offence to fail or refuse to provide this information or to provide false or misleading information, without reasonable excuse.
27. The maximum penalty for failing to comply is a court fine, upon conviction, not exceeding \$20,000 (section 52(6) of the LTA). However, the courts very rarely issue a substantial financial penalty for this offence (generally around \$600).¹²

¹¹ Within the land transport system, penalties are used to create positive behavioural change. Their primary role is to create a safe transport system, which reduces risk to road users. Road safety penalties are intended to encourage road users to comply with traffic regulation through both general and specific deterrence. General deterrence refers to the public having a perception that those who break the law will be caught and incur a penalty. Specific deterrence refers to those who have been caught, and the penalty is enough to prevent them from reoffending. Sakashita, C Fleiter, J.J. Cliff, D., Fliieger, M., Harman, B. & Lilley, M. (2021) *A Guide to the Use of Penalties to Improve Road Safety*. Global Road Safety Partnership, Geneva, Switzerland.

¹² The median fine for failing to identify a driver was \$600 (2018 – 2021).

28. Courts may currently issue a confiscation order under section 128 of the SA for failing to identify a driver (under section 52(6) of the LTA) if a person is convicted of an offence under section 52(6) of the LTA.
29. In addition, section 129 of the SA requires courts to confiscate vehicles if a subsequent driving related offence is committed against the LTA within a four-year period. The driving offence does not have to be for the same offence. The court must not make an order for confiscation if it will result in extreme hardship to the offender or undue hardship to any other

Fleeing driver profiles

30. The profile of a fleeing driver, including age, differs depending on circumstances and whether the driver is a first time or repeat offender.¹³
31. However, New Zealand research¹⁴ does show that fleeing drivers are more likely to be younger and male, identify as Māori, have criminal and traffic offence histories, and not have a current driver licence, or be disqualified or suspended from driving.
32. 85% of offenders charged with failing to stop were first time offenders. 3.6% were charged for a second offence, and 10.4% for a third or subsequent offence.

Motivation for fleeing

33. A range of factors contribute to a driver considering fleeing as a reasonable option and fleeing Police when signalled to stop. Thrill-seeking behaviour such as purposefully initiating a Police pursuit to post videos on social media does not appear to be a primary motivating factor in fleeing, despite being perceived by the public as such, and it is rare that offenders deliberately plan such activity in advance.¹⁵
34. The reported motivations of fleeing drivers do not appear to substantially differ across age groups. Drivers who identify as Māori or Pacific peoples are more likely to report negative perceptions of Police as a motivating factor.¹⁶
35. Where a fleeing driver event involves a stolen vehicle, it is more likely that a young person under 18 years will be the driver (58 percent of events where driver under 18 compared with 21 percent where 18-24 years and 18 percent where 25 years or older).¹⁷ For older drivers, it is more common that other illegal activity they are engaging in is possession of drugs or contraband.¹⁸

¹³ An important caveat is that a driver identified and charged with a first offence may be a repeat offender but not previously identified and apprehended by Police.

¹⁴ IPCA & NZ Police, 2019, [Fleeing drivers in New Zealand: A collaborative review of events, practices and procedures](#).

¹⁵ University of Canterbury. *Understanding the motivations of fleeing drivers: Individual factors* (9 November 2020).

¹⁶ University of Canterbury. *Understanding the motivations of fleeing drivers: Individual factors* (9 November 2020).

¹⁷ EBPC. *Understanding the motivations of fleeing drivers: Relationships with other offending* (December 2020).

¹⁸ University of Canterbury. *Understanding the motivations of fleeing drivers: Individual factors* (9 November 2020).

Table 5: profile of fleeing drivers¹⁹

	Police sample – 91 offenders identified	Authority cases – 68 offenders identified
Gender	95% were male	97% were male
Median age	24 years	26 years
Ethnicity	59% identified as Māori, 31% as European, and 8% as Pacific Islanders	65% identified as Māori, 26% as European, and 4% as Pacific Islanders
Median number of previous criminal convictions	16 (three for traffic offending)	27 (five for traffic offending)
Gang membership	40% were gang members or associates of gang members	31% were gang members or associates of gang members
Licence status	5% did not have a current driving licence or were disqualified or suspended from driving	68% did not have a current driving licence or were disqualified or suspended from driving
Previous failing to stop offences	31% had at least one previous failing to stop offence	40% had at least one previous failing to stop offence
Active charges	25% were on active charges, and 18% had a warrant to arrest at the time of the offence	37% were on active charges, and 16% had a warrant to arrest at the time of the offence

The use of penalties in the land transport system

36. The transport regulatory system uses several distinct regulatory levers to support compliance and respond to offending. These can include financial penalties, incarceration, licence removal, the impoundment of vehicles, and the confiscation of vehicles.
37. In using tools such as impoundment, it is recognised that this reduces the immediate likelihood of reoffending. This has been evidenced previously following the introduction of 28-day impoundment provisions for driving while disqualified.²⁰
38. Financial penalties (infringement fees and maximum fines before a court) support the transport regulatory system by encouraging positive behaviour and responding to negative behaviour (particularly of a more serious nature). Financial penalties are designed to deter as they are a swift punishment.

Penalties can lead to unfair outcomes...

39. The road safety penalties system can contribute to unfair outcomes through:
- **Income stress** – infringement fees and licence sanctions can push people with limited financial means into further income stress, which harms their wellbeing and may make it difficult for the person to comply in future.
 - **Removal of access to society:** Licence sanctions, impoundments, and vehicle confiscations can have a more impactful and cumulative effect on people without access to other transport options as they may need their vehicle to travel to work, the supermarket, healthcare, and other services.
 - **Entry pathway into the justice system** – infringement fees that are not paid on time can be escalated to the Court. The Court enforcement process results in additional

¹⁹ IPCA & NZ Police, 2019, [Fleeing drivers in New Zealand: A collaborative review of events, practices and procedures...](#), pg 68-70. Caveat – this report is from 2019 calendar year.

²⁰ The introduction of impoundment provisions in the Land Transport Act 1998 in 2001 led to a 29 percent reduction in the proportion of crashes involving disqualified or unlicensed drivers.

costs and potential hardship, especially for those with limited financial means. Additionally, 58 per cent of people coming before the Court for the first time had a traffic offence as their most serious charge.

- **Equity** – road safety penalties can disproportionately affect Māori and further contribute to the overrepresentation of Māori in the criminal justice system and prison population. Road safety penalties can also disproportionately affect those on lower incomes.
40. When creating new penalties, Te Manatū Waka seeks to balance these concerns with the implications on overall road safety.

Evidence indicates that increasing the severity of punishment does little to deter offending

41. There is no evidence that more severe penalties lead to a reduction in criminal behaviour. Rather, the evidence indicates that the *certainty* of punishment is a much more effective deterrent than increasing the severity of punishment, which does little to deter offending. Strategies that increase offenders' perceptions that they will be apprehended are more likely to influence behaviour and reduce offending. There is also evidence favouring the effectiveness of sanctions that are swift.
42. Therefore, to be effective, potential offenders need to perceive punishment to be swift, certain and severe enough to outweigh the benefits of committing the offence.
43. For fleeing drivers, this is complicated proposition, as these drivers tend to make snap decisions in the heat of the moment, rather than measured decisions made through the careful weighing up of options. Also, one of the main motivations for fleeing Police given by many offenders is the punishment (for other offences) they believe they may be able to avoid by fleeing.²¹ These primary offences may have penalties significantly higher than any in the road safety regulatory system; for example, joy riding has a punishment of up to seven years imprisonment.²² Therefore, increased failure to stop penalties are unlikely to deter offending, but temporary removal of a vehicle or licence may reduce the likelihood of reoffending.
44. These points are reinforced in recent Evidence-Based Policing Centre (EBPC) research on interventions for fleeing drivers which found that increasing penalties for failing to stop may have a limited effect on offending.²³ It also found that the most successful interventions were likely to target increasing the perception of potential offenders that they will be identified and held to account, reducing the perception that fleeing is worth the risk; improving the relationship between potential offenders and Police and increasing perceived procedural justice; and preventative measures to reduce other offending (e.g. efforts to increase driver licensing, or drug and alcohol treatment).²⁴

How is the status quo expected to develop?

45. If no action is taken fleeing driver events are likely to continue to increase based on the continuing upward trend in reported fleeing driver events [see tables 2 and 3]. It will also remain difficult for Police to identify and apprehend fleeing drivers and hold them to account.
46. Police is currently reviewing its pursuit policy, and Waka Kotahi is also giving consideration as to what solutions may exist to address concerns in relation to the Motor Vehicle

²¹ EBPC *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

²² Section 226 of the Crimes Act 1961 – Conversion of vehicle or other conveyance.

²³ EBPC *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

²⁴ EBPC *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

Register. However, the ability for Police to effectively identify and hold fleeing drivers to account is largely determined by current legislative and policy settings.

47. As a result, fleeing driver events will continue to have detrimental road safety impacts and undermine the land transport regulatory system.

There is wider work underway in the transport system that is more likely to support the response to fleeing drivers

Road Safety Penalties Review and Safety Cameras

48. s 9(2)(f)(iv)

49. s 9(2)(f)(iv)

50. In conjunction with this work, Cabinet previously agreed to an expansion of the safety camera network (CAB-19-MIN-0575 refers), known as *Tackling Unsafe Speeds*. This will both increase the number of cameras on the road network, but also intends to introduce average speed cameras.

51. Police have access to this information, on a case-by-case basis, under the *Privacy Act 2020* for the purposes of law enforcement. This could mean that for the purpose of identifying fleeing drivers, that cameras could be used to aid in the identification of drivers.

Towage and Storage Review

52. Te Manatū Waka is also currently scoping a review of the regulated towage and storage system, but any recommended changes are likely to take place over a longer timeline than this regulatory change.

Other work

53. Kotahi Te Whakaaro, which was recently announced, is a localised initiative to Counties Manukau that will focus on tamariki who are involved in 'fleeing driver' or 'ram raid' offending. It is a multi-cross agency approach to responding to offending behaviour and takes a holistic whānau approach to look at the social stresses which give rise to offending.

54. The proposed Criminal Activity Intervention Legislation Bill includes a proposal to amend section 96 of the LTA to expand the list of offences for which Police are able to seize and impound vehicles for 28 days. The expanded list will include:

- Dangerous and reckless driving, where no injury or death (section 35 LTA – maximum penalty 3 months imprisonment + fine + disqualification).
- Aggravated careless use of a vehicle causing injury or death (section 39 LTA – maximum penalty 3 years imprisonment + fine + disqualification).

What is the policy problem?

55. Fleeing drive events have been steadily increasing in New Zealand over the past decade [see tables 2 and 3]. This poses a road safety risk, as fleeing drivers often engage in other road safety offences, such as dangerous driving.
56. Police, however, is facing challenges identifying and apprehending fleeing drivers under current legislative and policy settings. Police revised their pursuit policy in December 2020, to place emphasis on post event investigations. However, it is difficult for Police to identify the fleeing driver in a post-event investigation when the registered person of the vehicle does not comply with Police.
57. Additional legislative levers may better support post-event investigations, hold offenders to account, and improve the overall resolution rate.

Te Tiriti o Waitangi implications

58. As the proposed options could disproportionately impact Māori, under the active protection and partnership principles in Te Tiriti o Waitangi, Māori should have a right to be involved in decisions affecting them. However, due to time constraints, officials have not consulted Māori on any of the options in this RIS.
59. Māori are charged with crimes between two and three times more than the general population and are overrepresented at every stage of the criminal justice system. The Fleeing Driver Review highlighted that Māori were significantly overrepresented in both the Police and IPCA study case samples (59 and 65 per cent respectively).²⁵ Therefore, imposing stronger penalties could disproportionately affect Māori and further contribute to the overrepresentation of Māori in the criminal justice system and prison population.
60. Māori already experience transport disadvantage suffering various forms of exclusion such as geographic, physical, and economic.²⁶ A shift in the penalty regime and, specifically, vehicle confiscation or forfeiture will further exacerbate this exclusion and its resulting social and well-being factors to which it contributes.
61. Increased licence disqualification periods will also contribute to transport inequity as Māori are less likely to hold a driver licence, with the most common reason being financial barriers.²⁷ Figures from 2018 shows that 30 percent of Māori aged 16 to 24 have no licence, compared to 20 percent of Pākehā.²⁸

Population group implications

62. New Zealand research²⁹ shows that fleeing drivers are more likely to be younger and male, identify as Māori, have criminal and traffic offence histories, and not have a current driver licence, or be disqualified or suspended from driving. This means any proposed changes will have the biggest impact on these population groups.
63. The removal of vehicles, whether it be through impoundment, confiscation or forfeiture will have a greater impact on people without access to other transport options, and lower socio-economic groups, who may need their vehicle to access key amenities, including employment, the supermarket, healthcare, and other services.

²⁵ IPCA & NZ Police, 2019, [Fleeing drivers in New Zealand: A collaborative review of events, practices and procedures](#)

²⁶ 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

²⁷ Ibid.

²⁸ I. Sin, and H. Kotula, 2021, Rates of driver licence holding in Aotearoa New Zealand, Motu Research Note 44, Motu Economic and Public Policy Research, Wellington, New Zealand.

²⁹ IPCA & NZ Police, 2019, [Fleeing drivers in New Zealand: A collaborative review of events, practices and procedures](#)

64. Penalties involving vehicle removal would also have greater impact on rural communities where other forms of transport are less available.
65. The potential for higher penalties could also have implications for the criminal justice pipeline and result in disproportionate outcomes.
66. Increasing financial penalties could potentially create disproportionate outcomes for individuals who are unable to pay fines or fees. This is a risk wherever financial penalties apply.

What objectives are sought in relation to the policy problem?

67. The main objective of addressing the policy problem will be to reduce harm on roads, by supporting Police to effectively identify and hold fleeing drivers to account.
68. Options should seek to drive a change in behaviour in fleeing drivers and improve overall road safety. These objectives will need to be balanced against ensuring equitable outcomes and human rights, as provided for in the *New Zealand Bill of Rights Act 1990*, specifically:
 - section 14, which affirms the right to freedom of expression, including the right to silence
 - section 21, which affirms the right to be free from unreasonable search and seizure
 - section 25, which affirms the minimum standards of criminal procedure, including the right to be presumed innocent until proved guilty according to law, the right to not be a witness or confess guilt, and the right to a fair and public hearing before an independent and impartial court
 - section 27, which affirms the right to justice.

Options will also be analysed against the background of regulatory stewardship. The purpose of regulatory stewardship in this instance will be to ensure that:

- regulators (in this instance, Police) have the correct tools and resources to respond to unsafe behaviours on New Zealand's roads;
- where a regulatory intervention occurs, that unintended consequences are mitigated and driver's human rights are upheld, and
- the regulatory system is fit for purpose and in line with other regulatory systems.

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

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

69. The following criteria have been used to analyse options under both the penalising and identification options.

Criteria	What this means
Effectiveness	In accessing the overall effectiveness of the options, the following factors will be considered: <ul style="list-style-type: none"> • holding offenders to account • deterring offending • supporting Police identify drivers in fleeing driver events • reducing road related harm / maintaining public safety.
Operational feasibility	The ease of implementation (procedurally simple), taking into consideration the impact on funding and resourcing for Police, Waka Kotahi, and towage and storage providers.
New Zealand Bill of Rights Act 1990 implications	The degree to which a policy intervention takes into consideration the impact on the rights of those affected by options.
Equity	The policy is equitable for different population groups and is a proportionate response to offending.

What scope will options be considered within?

- 70. Cabinet has requested proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264].
- 71. The options have been divided into two focus areas. Legislative options to:
 - penalise fleeing drivers, and
 - identify fleeing drivers.
- 72. Due to Cabinet direction, the options have been limited to legislative options. However, it is intended that operational changes (e.g. potential changes to Police’s pursuit policy), will support legislative amendments.
- 73. Consideration of options has been constrained by the pace of the policy development process. This constraint has meant stakeholders were not able to be consulted and unintended consequences may not have been fully identified.
- 74. Similarly, this has meant that advice has had to be provided that does not always have complete data. An example of this is the financial implication of options proposed. This means that implementation considerations may not be adequately considered during the initial decision-making points.

What options are being considered?

This section has been divided into two parts, legislative options to:

- increase penalties fleeing drivers, and
- assist in identifying fleeing drivers after the event.

Increasing penalties for fleeing drivers

What options are being considered to increase penalties for fleeing drivers?

75. The following options are being considered against the status quo:

- Option 1A: Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary due to the tiered penalty structure)
- Option 1B: Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences as a maximum
- s 9(2)(f)(iv)
- Option 1D: Enabling permanent removal of vehicles post-conviction for failure to stop (forfeiture)
- Option 1E: Enabling permanent removal of vehicles without conviction (forfeiture or confiscation).

76. Officials have identified a range of options which could be advanced separately or in combination. Although not all options would work in combination, for example progressing Option 1B would make Option A redundant.

Option - Status Quo

Description:

77. This is the baseline option that maintains the current state. It would see Police continue to respond to fleeing drivers without any further interventions, of either an operational or legislative nature.
78. The safety and enforcement concerns that prevent Police from being able to take immediate enforcement action would continue.

Analysis:

79. Over the last decade, there has been a steady increase in the number of reported fleeing driver events per year. If no action is taken, fleeing driver events are likely to continue to increase based on continuing upward trend in reported fleeing driver events [see table 2], and it will remain difficult for Police to hold fleeing drivers to account.
80. The status quo poses risks to the safety of the New Zealand public on the roads, as fleeing drivers often engage in other road safety offences, such as dangerous driving. The status quo also presents reputational risk for Police and undermines public trust and confidence.

Option 1A: Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary due to the tiered penalty structure)

Description:

81. This option would increase disqualification periods for first, and second failing to stop offences:

- A first failing to stop offence (committed while speeding or driving dangerously) would receive a mandatory disqualification of six months up to one year (rather than a set period of six months).
 - A second failing to stop offence would receive a mandatory disqualification of one year up to two years (rather than a set period of one year).
 - A third or subsequent offences would remain at a mandatory disqualification period of two years as the period is already higher than comparable offences.
82. This option would align failing to stop offences with more serious driving offences such as dangerous driving where injury occurs (mandatory disqualification of 1 year or more).
83. It would retain the current approach of no disqualification for first offence, unless committed while speeding or driving dangerously.
84. Section 81 of the LTA would continue to apply, which provides the ability for the court to apply discretion for mandatory disqualifications, where there are special reasons relating to the offence. For example, for the court to substitute disqualification with a community-based sentence.

Analysis:

85. This option would provide courts with greater discretion to impose longer disqualification periods for first and second offences, up to a maximum disqualification period. This would signal the seriousness of fleeing Police, particularly if coupled with activities to promote awareness of the penalty increase.
86. This option may reduce the likelihood of reoffending by the disqualified person, as it limits their ability to drive for a lengthier period (though some people will continue to drive despite the disqualification). This is supported by evidence that suggests penalties that emphasise loss (e.g., of a licence/vehicle), rather than monetary penalties, may be much more effective at changing behaviour.³⁰
87. Under this option, offenders disqualified for over one year would be required to re-sit their driver licence test, which would provide an opportunity to reinforce expected driving behaviour. It may also delay the return to driving and increase the deterrent effect of licence disqualification.³¹
88. Longer disqualification periods may also have a positive road safety impact, as they would remove dangerous drivers from the road, provided there was not an increase in drivers driving while disqualified.

This option is unlikely to have a general deterrent effect in regard to the primary offence...

89. Recent EPBC research on fleeing drivers indicates that increasing penalties for failing to stop may have a limited effect on offending.³² This is particularly so given that fleeing

³⁰ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

³¹ J Hatfield, T Senserrick, S Boufous, L Mooren, A Williamson, C Sakashita and S Job, Human factor considerations for a licensing point system, Transport and Road Safety (TARS) Research, School of Aviation, University of New South Wales, NZ Transport Agency research report 657 (2019), p.25; Basili, M and A Nicita (2005) Deterrence and compliance in a demerit point system. *Universita degli Studi di Siena*.

³² EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

drivers tend to make snap decisions in the heat of the moment, rather than careful weighing of options.

90. Longer disqualification periods (and additional requirements such as re-sitting licence tests) may also simply encourage offenders to drive without a licence. Evidence shows that many disqualified drivers continue to drive.³³
91. Increasing the disqualification period, coupled with the knowledge that disqualified driving could result in imprisonment could create a fear of Police in young drivers, which instead of having a deterrent effect may reinforce their desire to flee from Police when confronted.³⁴
92. In terms of operational feasibility, there would be no operational implications for Police as this option would be similar status quo in terms of process. However, there are some areas of the country with a substantial delay in the booking of practical driver licence tests, which would mean some people would experience further delays in getting their licence reinstated. This option could also increase breach offences for driving while disqualified (due to longer periods of disqualification), which would have an impact on the courts.
93. This option is unlikely to have NZBORA implications, as no protected right is prima-facie engaged.

This option will have equity implications...

94. In terms of equity, this option would provide courts with a level of discretion to consider individual circumstances (within the ranges for disqualification periods).
95. However, this option would align failing to stop offences with more serious driving offences. Failing to stop (in and of itself) may not be dangerous and is arguably less serious than offences such as dangerous driving which carry a greater risk of harm. As such it may not be comparable and should attract a lesser penalty. There is a risk this penalty could be considered disproportionate.
96. For people without access to other transport options, longer disqualification periods could limit their access to employment, health, and other services. This is mitigated to some extent by section 81 of the LTA, which provides courts the discretion not to impose a licence disqualification, where there are special reasons relating to the offence.
97. This option may also adversely impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)³⁵. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.

³³ J Hatfield, T Senserrick, S Boufous, L Mooren, A Williamson, C Sakashita and S Job, Human factor considerations for a licensing point system, Transport and Road Safety (TARS) Research, School of Aviation, University of New South Wales, NZ Transport Agency research report 657 (2019), p.23; Joerger, M (2002) Profile of driver problems follow-up evaluation: an examination of driver demographic information and driving record. Oregon Department of Transportation; Watson, B (1998) The effectiveness of drink driving licence actions, remedial programs and vehicle-based sanctions. Pp66–87 in Proceedings 19th ARRB Research Conference.

³⁴ Evidence Based Policing Centre *Understanding the motivations of fleeing drivers – Literature review of youth motivations* (September 2019).

³⁵ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

Option 1B: Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences, as a maximum

Description:

98. This option would remove the tiered penalty structure for failing to stop offences and would make the maximums for the offence the same as the current maximums for the third and subsequent offence.
99. The current penalty for a person convicted for a third or subsequent offence is:
 - possible imprisonment for a term not exceeding three months
 - a fine not exceeding \$10,000; and
 - mandatory disqualification of two years.
100. Under this option, courts would have discretion to give a mandatory disqualification period up to a maximum of two years. Aggravating factors (which are currently a consideration for first failing to stop offences) would not be a specific requirement for imposing a longer disqualification.

Analysis:

101. This option would give the court discretion to impose stronger penalties. This would signal the seriousness of fleeing Police, particularly if coupled with activities to promote awareness of the penalty increase.
102. This option could result in a longer disqualification period for first offences, as aggravating factors (driving dangerously or speeding) would no longer be a specific requirement for imposing a six-month disqualification.
103. This option may reduce the likelihood of reoffending by the disqualified person, as the court could limit their ability to drive for up to two years (though some will continue to drive despite the disqualification). This is supported by evidence that suggests penalties that emphasise loss (e.g., of a licence/vehicle), , may be much more effective at changing behaviour.³⁶
104. Longer disqualification periods would have a positive road safety impact, as they would remove vehicles from the road, provided there was not an increase in drivers driving while disqualified.
105. However, this option is unlikely to have a general deterrent effect in regard to the primary offence. Recent EBPC research on fleeing drivers indicates that increasing penalties for failing to stop may have a limited effect on offending.³⁷ This is particularly so given that fleeing drivers tend to make snap decisions in the heat of the moment, rather than careful weighing of options.
106. This option could also result in shorter rather than longer disqualification periods for second, third and subsequent offences, particularly for lower-level offending. This is because mandatory disqualification periods would not be set, and the courts would have discretion to consider individual circumstances.

³⁶ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

³⁷ EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020).

107. In terms of operational feasibility, this option would remove enforcement challenges, as earlier offending would not need to be established. However, it may have an operational impact on the justice system due to increased prison sentences, fines, and lengthier disqualification periods. It could also increase breach offences for driving while disqualified (due to longer periods of disqualification), which would have an impact on the courts.
108. This option is unlikely to have NZBORA implications, as no protected right is prima-facie engaged..
109. In terms of equity, this option would retain courts discretion to allow individual circumstances to be considered. However, by removing the requirement for aggravating factors, it could also have unintended consequences, such as disproportionate penalties on low level offending or potential imprisonment for a first offence.
110. The transport penalty system is one of the main inputs into the Justice system, so this option could have unintended consequences if an offender is unable to pay the fine, particularly for lower socio-economic groups. If this is the case, it is likely that they could default, or be referred to debt collectors. This may particularly impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending.
111. For people without access to other transport options, longer disqualification periods could also limit their access to employment, health, and other services. This may particularly impact Māori, as Māori are more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)³⁸.

s 9(2)(f)(iv)

[REDACTED]

³⁸ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

³⁹ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

s 9(2)(f)(iv)

[REDACTED]

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

⁴⁰ Ibid.

⁴¹ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

s 9(2)(h)

[REDACTED]

PROACTIVELY RELEASED BY
TE MANATU WAKA MINISTRY OF TRANSPORT

42 <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

Option 1D: Enabling permanent removal of vehicles post-conviction for failure to stop (forfeiture)

Description:

135. This option would provide the court the ability to issue a forfeiture order instead of a confiscation order for drivers who fail to stop and remained stopped.
136. Currently the court may issue a confiscation order under section 128 of the Sentencing Act 2002 for a vehicle involved in a fleeing driver event. The court must issue a confiscation order if a second driving offence is committed within a 4-year period.
137. The ability for the court to consider undue hardship and the current review and appeal mechanisms would be retained.

Analysis:

138. This option would be a significant sanction, as offenders could get their vehicle permanently removed and would not get any proceeds from the sale. This would signal the seriousness of the offending.
139. While fleeing drivers are less likely to be influenced by a financial or criminal penalty, the possibility of permanent loss of their vehicle could have a strong specific deterrent effect. This is supported by evidence that suggests that penalties which emphasise loss (of a licence/vehicle) may be much more effective at changing behaviour.⁴³
140. As this option would permanently remove vehicles from the road, it may have a positive impact on road safety.
141. However, this option is unlikely to have an immediate deterrent effect on current offending. There is a risk that it could lead people to flee more often and in a more dangerous manner to avoid losing their car.⁴⁴
142. Courts use the current discretionary power infrequently.⁴⁵ There is a risk that this additional lever would not be used either.
143. In instances of vehicles being financed, there is also a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person would have to continue paying the loan.
144. In terms of feasibility of implementation, this option would be similar to the status quo, as the ability for courts to confiscate vehicles already exists. There could be a potential increase in the volume of appeals, which would have an impact on the court system.

⁴³Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

⁴⁴ *Ibid.*

⁴⁵ Between 1 January 2018 – 31 December 2021, only 6 confiscation orders were given for failing to stop.

process, and does not, in Crown Law's view, engage s 9 rights to be free from disproportionately severe treatment.

This option has significant equity implications

146. This option would be a disproportionate penalty, when compared with other offences and penalties in the transport regime. Forfeiture is also usually reserved for high end offences (e.g., maximum term of 5 years).
147. This option would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare, and other services. This could be mitigated to some extent, but the ability to apply to the court for relief.
148. It may also unfairly penalise people who are not involved in the commission of an offence (such as a parent who has lent their vehicle to their child). For those whose vehicles were used in the commission of an offence, without their knowledge, the burden would be high.
149. This option may also adversely impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending. In particular, it could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)⁴⁶. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.

Option 1E: Enabling permanent removal of vehicles without conviction (forfeiture or confiscation)

Description:

150. This option would create a new forfeiture power enabling Police to remove vehicles involved in fleeing driver events, without conviction. Forfeiture would result in the permanent taking of the vehicle pre-conviction, with any proceeds from the sale of the vehicle remaining with the Crown.
151. Police can currently seize or impound vehicles involved in fleeing driver events for 28-days under section 96 of the LTA. However, Police cannot currently require vehicles to be permanently removed through confiscation or forfeiture without conviction.
152. This option could be made less punitive by confiscating rather than forfeiting vehicles. Confiscation would also result in the permanent taking of vehicles, however, if the vehicle is sold, the registered person may receive some proceeds.
153. Oversight mechanisms would be needed for the new power. New mechanisms could be modelled on the current review and appeal provisions for 28-day impoundment and post-conviction confiscation of vehicles.

Analysis:

⁴⁶ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

154. This would be a swift and significant sanction, which may outweigh the possible rewards of committing the offence. If forfeiture is chosen, the offender would also not get any proceeds from the sale.
155. This option would signal the seriousness of the offending. It may also increase the perception that Police are holding fleeing driver to account, particularly if coupled with activities to promote greater awareness.
156. While fleeing drivers are less likely to be influenced by the likely financial or criminal penalty, permanently removing the vehicle could have a strong specific deterrent effect. This is supported by evidence that suggests that penalties which emphasise loss (of a licence/vehicle) may be much more effective at changing behaviour.⁴⁷
157. This option would permanently remove vehicles from the road, which may have a positive impact on road safety.
158. However, this option is unlikely to have an immediate deterrent effect on current offending. There is also a significant risk that it could lead people to flee more often and in a more dangerous manner to avoid losing their car.
159. This option could undermine trust and confidence in Police and the justice system. The public's views on the rule of law, including the presumption of innocence and right to a fair trial, could be negatively impacted.
160. In instances of vehicles being financed, there is also a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle that they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person would have to continue paying the loan.

There are uncertain operational outcomes that come from this intervention...

161. The feasibility of implementing this option is currently uncertain, and further resource would be required to assess this. ^{s 9(2)(f)(iv)} [REDACTED] However, it is likely it would result in a significant increase in the volume of appeals, which would have an impact on the court system. It may also result in the court not imposing other penalties, because they view the permanent removal of vehicles as a sufficient punishment.
162. Implementation could also be impeded by limitations in the Motor Vehicle Register (the Register). Due to the registered person transfer process that requires the new registered person of the vehicle to update their details, some vehicles are registered to "unknown" or have incorrect addresses associated with vehicles. In addition, there may be vulnerabilities that could be deliberately taken advantage of by offenders seeking to avoid vehicle seizure. The Register does not flag concerns if a vehicle has had frequent changes to the registered person in a period of time, and vehicles that are subject to a confiscation order under the Sentencing Act are not tracked through the Register.

This option would have significant BORA implications ...

163. ^{s 9(2)(h)} [REDACTED]

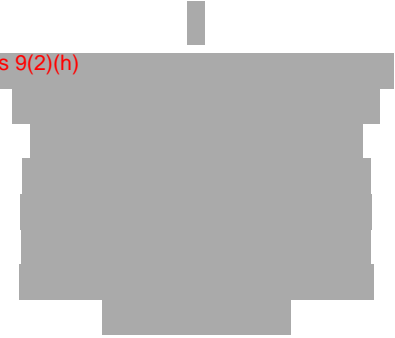
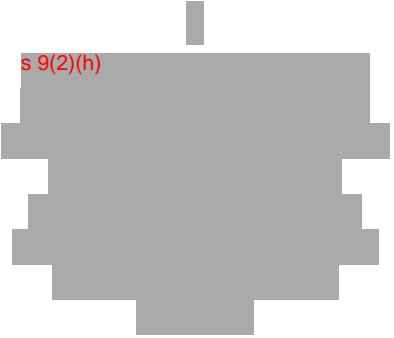

⁴⁷ Kahneman, D., & Tversky, A. (1979). *Prospect theory: An analysis of decision under risk*. *Econometrica*, 47, 263-291. EBPC, *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020), p.16.

This option also has significant equity implications...

165. This option would be an outlier when compared with other offences and penalties in the transport regime and therefore disproportionate. Forfeiture is also usually reserved for high-end offences (e.g., maximum term of 5 years).
166. This option would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare, and other services.
167. It may also unfairly penalise people who are not involved in the commission of an offence (such as a parent who has lent their vehicle to their child). For those whose vehicles were used in the commission of an offence, without their knowledge, the burden would be high.
168. This option may adversely impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending. In particular, it could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)⁴⁸. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health..
169. To mitigate risks, a review or appeal mechanism would be required. There is also the option of limiting forfeiture to more egregious situations, for example, where the registered person of the vehicle provides false or misleading information to prevent the identification of the fleeing driver.

⁴⁸ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

How do the options to increase penalties for fleeing drivers compare to the status quo/counterfactual?

	Option One – Status Quo	Option 1A – Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary due to the tiered penalty structure)	Option 1B – Removing the tiered penalty structure for failing to stop and applying the third and subsequent offence penalties for all offences, as a maximum	Option 1C – Enabling temporary removal of vehicles for failing to stop (six months impoundment)	Option 1D – Enabling permanent removal post-conviction for failure to stop (forfeiture)	Option 1E – Enabling permanent removal of vehicles without conviction (forfeiture or confiscation)
Effectiveness	0	<p>+</p> <p>Likely to be an effective deterrent for reoffending, particularly if coupled with awareness raising about the increased penalty. Non-monetary penalties likely to be more effective. It may have a positive impact on road safety.</p>	<p>+</p> <p>Effective in terms of signalling the seriousness of the offending. Likely to be an effective deterrent for reoffending. Gives the court the discretion to impose stronger penalties.</p>	<p>++</p> <p>Effective as evidence shows that swift and significant sanctions are a deterrent, particularly for reoffending. It may have a positive impact on road safety. Vehicles would need to be returned if charges are not progressed.</p>	<p>+</p> <p>Effective as it would signal the seriousness of the offending. It would be a significant sanction and would act as a deterrent for reoffending. It may have a positive impact on road safety.</p>	<p>++</p> <p>Effective as evidence shows that swift and significant sanctions are a deterrent, particularly for reoffending. It would signal the seriousness of the offending. It may have a positive impact on road safety.</p>
Operational feasibility	0	<p>0</p> <p>May see an increase in drivers needing to re-sit their licences.</p>	<p>0</p> <p>Easier to enforce because it does not require the establishment of earlier offending. It may have an operational impact on the justice system due to increased prison sentences, fines, and lengthier disqualification periods.</p>	<p>-</p> <p>There is a known shortage of towage and storage operators, and this could exacerbate the rate of abandoned vehicles, which would increase costs for operators and Police if they were unable to recoup costs. It is unlikely operators would undertake these Police impoundment jobs. Could also result in an increase in volume of appeals.</p>	<p>0</p> <p>Similar to status quo, as the ability for courts to confiscate vehicles already exists.</p>	<p>-</p> <p>May result in courts not imposing other penalties because vehicle has already been permanently removed. Would potentially have an operational impact for courts because of more appeals.</p>
BORA implications	0	<p>0</p> <p>Unlikely to have NZBORA implications as an existing penalty.</p>	<p>0</p> <p>Unlikely to have NZBORA implications as part of existing penalty framework.</p>	<p>s 9(2)(h)</p> 	<p>s 9(2)(h)</p> 	
Equity	0	-	-	-	--	--

		<i>Would have a greater impact on people without access to other transport options. It may impact Māori and Pacific people who are over-represented in fleeing driver events and related offending. Risk the penalty would be disproportionate.</i>	<i>Road offences are a gateway offence for Māori and Pacific peoples so could have a greater impact of these population groups. Would have a greater impact on people without access to other transport options. Risk the penalty would be disproportionate.</i>	<i>Would have a greater impact on people without access to other transport options. It may particularly impact Māori and Pacific people who are over-represented in fleeing driver events and related offending.</i>	<i>Would have a greater impact on people without access to other transport options. This is mitigated to some extent by the ability to apply for relief. Would be a disproportionate penalty, when compared with other offences and penalties in the transport regime.</i>	<i>This would be a wholly disproportionate penalty. It would have a significant impact on people without access to other transport options and lower socio-economic groups.</i>
Overall assessment	0	0	0	0	0	--

Key:

- worse than doing nothing/the status quo/counterfactual
- ++ much better than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual

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

None of the options scored higher than the status quo in the multi-criteria analysis table above, although options 1A and 1B are not considered worse than the status quo. As a result, there is no preferred option. However, Ministers requested further analysis on options 1A - Increasing driver licence disqualification periods for failure to stop offences, ^{s 9(2)}_{(f)(iv)} and 1D – Enabling permanent removal post- conviction for failure to stop (forfeiture).

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What are the marginal costs and benefits of the option?

The tables below consider the marginal costs and benefits of Options 1A, 1C and 1D.

Option 1A – Increasing driver licence disqualification periods for failure to stop offences – up to a maximum (maximums will vary due to the tiered penalty structure)

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups – AA service providers	May see an increase in drivers needing to re-sit their licences.	Low	low
Regulators – Waka Kotahi and Police	Operational policies for Police will need to be reviewed to provide frontline staff with guidance.	Low – Police have not identified any additional costs	High
Regulators – the courts	may see an increase in breach offences for driving while disqualified (due to longer periods of disqualification).	Low	Medium
Road Users	N/A	N/A	N/A
Total monetised costs		Low	Medium
Non-monetised costs		N/A	N/A
Additional benefits of the preferred option compared to taking no action			
Regulated groups – AA	N/A	N/A	N/A
Regulators – Waka Kotahi and Police	N/A	N/A	N/a
Regulators – the courts	N/A	N/A	N/A
Road Users	On-going - may increase road safety impact, as it would remove vehicles from the road for the period of disqualification.	Medium	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

s 9(2)(f)(iv) [Redacted]

s 9(2)(f)(iv)

[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

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s 9(2)(f)(iv)			

Option 1D – Enabling permanent removal post-conviction for failure to stop (forfeiture)

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulators – courts	Ongoing – increase in volume of appeals.	Medium	Medium
Road Users	One-off – Offenders will be liable for the towage and storage fees.	Medium	High
Total monetised costs		Medium	Medium
Non-monetised costs		N/A	N/A
Additional benefits of the preferred option compared to taking no action			
Regulators – courts	Courts would have the discretion to apply a stronger penalty	Medium	N/A
Road Users	On-going - may increase road safety	High	Medium

	impact, as it would permanently remove vehicles from the road.		
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

All options have a level of cost involved when compared to the status quo.

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Identifying fleeing drivers after the event

What options are being considered to assist in identifying fleeing drivers after the event?

170. The following options are being considered against the status quo:

- Option 2A: Amending the financial penalty for failing to provide information to a fixed penalty
- Option 2B: Creating a liability for failing to stop for the registered person of a vehicle
- Option 2C: Allowing Police to seize and impound a vehicle for 28 days for the registered person failing or refusing to identify the driver of a fleeing driver event
- Option 2D: Requiring permanent vehicle removal for failing to identify driver (mandatory confiscation for all offences – post-conviction)
- Option 2E: Enabling permanent vehicle removal for failing to identify driver (discretionary forfeiture – post-conviction)

171. Officials have identified a range of options which could be advanced separately or in combination. Although not all options would work in combination.

Option – Status Quo

Description:

172. This is the baseline option that maintains the current state. It would see Police continue to be limited in their ability to identify fleeing drivers after an event, without any further interventions, of either an operational or legislative nature.

173. The safety and enforcement concerns that prevent Police from being able to take immediate enforcement action would continue.

Analysis:

174. If no action is taken, then Police will continue to face challenges identifying and apprehending fleeing drivers after an event, and in progressing investigations and enforcement actions.

175. Fleeing drivers who are not identified will also be able to commit further potential fleeing driver events or other offences.

176. The status quo poses risks to the safety of the New Zealand public on the roads. It also presents reputational risk for Police and undermines public trust and confidence.

Option 2A: Amending the financial penalty for failing to provide information to a fixed penalty

Description:

177. This option would set a fixed penalty for the registered person of a vehicle who fails or refuses to disclose the identity of a fleeing driver that is applicable on conviction (rather than the current fine of up to a maximum of \$20,000).

178. A \$2,500.00 fixed penalty is proposed, based on an assessment using the Te Manatū Waka Effective Transport Financial Penalties Policy Framework.⁴⁹ This is compared with the current median fine of \$600 for failing to identify a driver (2018 – 2021). However, a \$5,000.00 fixed penalty, or a range with a fixed minimum of \$1,000 and a fixed maximum of \$20,000 have also been considered.

Analysis:

179. This option would provide a strong regulatory lever. It would remove court discretion and require courts to impose a penalty that is nearly four times the size of the current median penalty.

180. This option may provide an additional incentive for the registered person to provide information to Police. Evidence indicates that interventions, such as post-event investigations and targeting penalties to the registered person, increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit.⁵⁰ Enforcing penalties on the registered person may also mean they take a more proactive approach to monitoring the use of their vehicle.⁵¹

181. However, if there is a chance that offenders may still receive a lesser penalty through refusing to identify a driver than for other potential offences committed (e.g., burglary), then it is reasonable to expect that this option may not incentivise the registered person of the vehicle to cooperate with Police.

182. While a \$5,000 fixed fine was the initial option considered, a \$2,500 fixed fine would be more consistent with the Effective Transport Financial Penalties Framework and Tool, which Te Manatū Waka uses to evaluate all transport financial penalties. A range of \$1,000 to \$20,000 would not be consistent with the Effective Transport Financial Penalties Framework and Tool.

183. If Cabinet were to progress with a fixed fine, advice from officials is that this option would be inconsistent with the *Legislation Design and Advisory Committee 2021 guidelines* (LDAC Guidelines), which say that legislation must state the maximum fine.⁵² A range with a minimum amount would still present issues, as the LDAC guidelines also recommend against setting minimum penalties in legislation because it limits the courts' ability to impose a sentence appropriate to the particular case, and it may also be seen as contrary to the principle of the separation of power and judicial independence.⁵³

184. In terms of operational feasibility, there would be no substantive change to operational processes.

185. s 9(2)(h)



⁴⁹ The Framework provides Te Manatū Waka with a systematic approach to address problems with financial penalties across the transport system. The Framework supports reviewing existing and setting new financial penalties in transport legislation. It leads to penalties that are better aligned to levels of harm and more consistent across transport modes, as well as with other relevant regulatory regimes.

⁵⁰ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

⁵¹ Ibid.

⁵² Legislation Design and Advisory Committee Guidelines 2021, pg 126 <http://www.ldac.org.nz/assets/documents/LDAC-Legislation-Guidelines-2021-edition-v2.pdf>.

⁵³ Ibid.

186. The transport penalty system is one of the main inputs into the Justice system, so this option could have unintended consequences if an offender is unable to pay the fine, particularly for lower socio-economic groups. If this is the case, it is likely that they could default, or be referred to debt collectors. This may particularly impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending.
187. This would also be an outlier in the criminal justice system and could lead to disproportionate penalties. The Ministry of Justice is not aware of any other criminal (not infringement) offence where the penalty is fixed. Generally, a maximum penalty is provided, with the specific penalty determined in each case by the court after considering factors such as financial hardship, the circumstances of the offending, etc. Legislation Design and Advisory Committee guidelines recommend against the use of minimum or fixed penalties as it limits the courts' ability to impose a sentence appropriate to the particular case.

Option 2B: Creating a liability for failing to stop for the registered person of a vehicle

Description:

188. This option would make the registered person of a vehicle liable for failing to stop offences and penalties including driver licence disqualification and court fines and potentially imprisonment. An oversight mechanism where the registered person can seek review could be included.
189. This approach has been used for infringement offences such as speeding. However, for speeding, the process for the registered person of the vehicle to transfer liability on to someone else if they were not driving is straightforward and involves a simple statutory declaration. The attaching of liability to the driver also does not apply when the speeding is more than 50 km/h over the limit, where a criminal penalty applies rather than an infringement.

Analysis:

190. This option would provide a strong regulatory lever to deter offending, as the registered persons would be liable for mandatory disqualification and could be liable for imprisonment or a substantial financial penalty. It would clearly signal the seriousness of the offence.
191. Evidence indicates that interventions, such as post-event investigations and targeting penalties to the registered person of a vehicle, increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit.⁵⁴ This is expected to have an effect overall offending.⁵⁵
192. This option may provide additional incentive for the registered person to provide information to Police. It may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicles. This is supported by evidence, that suggests that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.⁵⁶
193. There is a similar approach in Queensland, Australia, where the registered person of a vehicle involved in a fleeing driver event is issued an evasion notice and must provide evidence to demonstrate they were not the offending driver.

⁵⁴ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

⁵⁵ Ibid.

⁵⁶ Ibid.

194. However, there is a risk that this option could undermine trust and confidence in Police and the justice system.
195. In terms of operational feasibility, there would be no substantive change to operational processes as penalties are already applied to failing to stop offences. However, there may be an increase in court volumes due to an increase in Category 2 offences (full hearing needed because of imprisonment penalty) and appeals.

s 9(2)(h)

This option would also have significant equity implications...

200. This option will likely disproportionately impact those from lower socioeconomic backgrounds more as they may not understand the legislation or have the resources to appeal a decision.
201. This proposal presents risks, in terms of proportionality, as it may unfairly penalise people who are not involved in the commission of an offence (such as a parent who lent their vehicle to their child). In some circumstances, the registered person of a vehicle may also not be the vehicle's owner, or they may not have day-to-day control of the vehicle. For example, a parent who is the registered person of their grown child's vehicle. For people in these circumstances, the burden would be high.
202. There is also a risk that in certain circumstances, the registered person of a vehicle may be placed in danger by the request for information. For example, if the driver was a violent domestic partner.
203. This option would also be a disproportionate response, when compared with other offences and penalties in the transport regime. Speeding and other offences where this approach is used are usually infringement offences, whereas this would result in a criminal conviction which is a much more serious outcome.
204. A review mechanism could be used to mitigate some of these concerns, but this will still place a significant inconvenience or cost on the registered person of the vehicle.

Option 2C: Allowing Police to seize and impound a vehicle for 28 days for the owner failing or refusing to identify the driver of a fleeing driver event

Description:

205. This option would explicitly provide Police the power to seize and impound (or continue to impound) where the owner to comply with a request for information under section 118(4) LTA. Police would need to have reasonable belief that impounding the vehicle is necessary to prevent a threat to road safety.

206. The requirement for vehicle to be released if charges are not laid, and current review and appeal mechanisms would be retained.
207. Police currently has the power to seize and impound a vehicle for 28 days for failing to stop under section 96(1AB) LTA. However, Police does not have the power to seize and impound a vehicle where the owner of a vehicle fails to comply with a request to provided information to identify the registered person of the vehicle (section 118(4) LTA).

Analysis:

208. This is a swift and evidence-based sanction. The risk of losing a vehicle for 28 days has been shown to influence driver behaviour and have positive road safety outcomes. The power to impound vehicles for 28 days was introduced in 1999 and has been an effective deterrent for those driving while disqualified or unlicensed and had positive road safety outcomes. Since this date, there has been a 29 per cent reduction in the proportion of crashes involving disqualified or unlicensed drivers, and a 34 per cent reduction in the number of detected driving while disqualified offences.⁵⁷
209. Evidence also indicates that interventions, such as post-event investigations and targeting penalties to the registered person, increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit.⁵⁸ This is expected to have an effect on overall offending.⁵⁹
210. This option may provide additional incentive for the registered person to provide information to Police. It may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicles. This is supported by evidence, that suggests that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.⁶⁰
211. This option may also have a positive impact on road safety, for the period of impoundment.
212. In terms of operational feasibility, this option would enable Police to impound the registered person's vehicle when they fail to provide Police with information to identify a fleeing driver. This would help reduce the current operational challenges Police are facing in post-event investigations of fleeing drivers. However, as this option would expand the list of circumstances for permitted vehicle impoundment, it could increase the number of impounded vehicles and place additional pressure on the already stretched towage and storage system.

This option is likely to have significant NZBORA implications

213. There is a risk that this option will be found non-compliant with NZBORA. In 2016 a similar proposal did not progress beyond the select committee stage, because a NZBORA section 7 report found it inconsistent with section 21: unreasonable search and seizure. The Attorney-General at the time found that impounding a vehicle in relation to failure or refusal to provide information would not be rationally or proportionately connected to the primary purpose of Police vehicle impoundment, which is road safety.⁶¹ The Attorney-General was also concerned that giving enforcement officers the power to

⁵⁷ Te Manatū Waka data July 2019.

⁵⁸ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Report of the Attorney General under the New Zealand Bill of Rights Act 1990 on the Land Transport Amendment Bill. Published by Order of the House Representatives – 2016, pg 3.
<https://www.justice.govt.nz/assets/Documents/Publications/20160909-s7-land-transport-amendment-bill.pdf>

confiscate property in order to coerce the provision of information relevant to an investigation, could be disproportionate.⁶² The Attorney-General did not think that the power, once exercised, would necessarily prevent the person believed to have failed to stop from driving, or further the goal of identifying the person who has failed to stop.⁶³

214. The Attorney-General proposed Police rely on the existing power to seize and impound a vehicle, if they believe, on reasonable grounds, that it was involved in a fleeing driver event.⁶⁴ The Attorney-General also proposed including a limb in the section 118(4) power, which requires Police to form a reasonable belief that impounding the vehicle is necessary to prevent an imminent threat to road safety.⁶⁵ The intent was to more rationally connect the power to the purpose of road safety, which could help mitigate NZBORA concerns. However, it would also limit the possible practical application of the power.
215. This option reformulates the Attorney-General's proposed limb in the section 118(4) power and includes a requirement for Police to form a reasonable belief that impounding the vehicle is necessary to prevent a threat to road safety. The word 'imminent' would not be included, but Police's reasonable belief would need to be based on something substantial. For example, if Police had a reasonable belief that the registered person of the vehicle was the fleeing driver and would commit another fleeing driver event, or if the vehicle involved in the fleeing driver event had been involved in previous events.

s 9(2)(h)

217. In terms of equity, this option would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare, and other services. This may particularly impact Māori, as Māori are more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)⁶⁶. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.
218. However, current review and appeal mechanisms under sections 102 (appeal to Police) and 110 (appeal to the courts) of the LTA for vehicle owners who have had their vehicles impounded would apply.

Option 2D: Requiring permanent vehicle removal for failing to identify driver (mandatory confiscation for all offences – post-conviction)

Description:

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Report of the Attorney General, page 4.

⁶⁵ Report of the Attorney General, page 4.

⁶⁶ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

219. This option would require courts to confiscate vehicles involved in fleeing driver events where the owner of a vehicle fails or refuses to provide information to identify the driver under section 118 (4) of the LTA.
220. Courts may currently issue a confiscation order for failing to identify a driver; however, this is discretionary. In addition, courts are required to confiscate vehicles if a subsequent driving related offence is committed within a four-year period. The driving offence does not have to be for the same offence.
221. Section 129(4) requires the court to consider whether confiscation will result in extreme hardship to the offender or undue hardship to any other person. This would continue to apply.
222. Review mechanisms modelled on the current mitigations for post conviction confiscation of vehicles could be included.

Analysis:

223. This option would be a significant sanction, as the registered person of the vehicle would get their vehicle permanently removed. This would signal the seriousness of the offending.
224. Recent EBPC research indicates that interventions, such as post-event investigations and targeting penalties to the registered person of a vehicle, which increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit, are expected to have an effect on overall offending.⁶⁷
225. This option may provide additional incentive for the registered person to provide information to Police. It may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicles. This is supported by evidence, that suggests that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.⁶⁸
226. As this option would permanently remove vehicles from the road, it may have a positive impact on road safety.
227. However, in instances of vehicles being financed, there is a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person would have to continue paying the loan.
228. In terms of feasibility of implementation, this option would be similar to the status quo, as the ability for courts to confiscate vehicles already exists. However, there could be a potential increase in the volume of appeals, which would have an impact on the court system.

s 9(2)(h)

⁶⁷ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

⁶⁸ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

This option has significant equity implications...

231. This option will have a greater impact on people without access to other transport options who may need their vehicle to travel to work, the supermarket, healthcare, and other services.
232. It will also have a disproportionate impact in Māori, which will outweigh any potential road safety benefit. In particular, this option could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)⁶⁹. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.
233. This proposal presents risks, in terms of proportionality, as it may unfairly penalise people who are not involved in the commission of an offence (such as a parent who lent their vehicle to their child). In some circumstances, the registered person of a vehicle may also not be the vehicle's owner, or they may not have day-to-day control of the vehicle. For example, a parent who is the registered person of their grown child's vehicle. For people in these circumstances, the burden would be high.
234. There is also a risk that in certain circumstances, a registered person of a vehicle may be placed in danger by the request for information. For example, if the driver was a violent domestic partner.
235. This would also be a disproportionate response, when compared with other offences and penalties in the transport regime. For example, this would be more severe than the penalty for failure to stop.
236. A review mechanism could be used to mitigate some of these concerns, but this will still place a large inconvenience or cost on registered persons.

Option 2E: Enabling permanent vehicle removal for failing to identify driver (discretionary forfeiture – post-conviction)

Description:

237. This option would enable courts to issue forfeiture notice for vehicles involved in fleeing driver events where the owner of a vehicle fails or refuses to provide information to

⁶⁹ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

identify the driver under section 118(4) of the LTA. This would result in the permanent taking of the vehicle and the proceeds from the sale generally remaining with the Crown.

238. The ability to apply for relief under section 142J or relief because of undue hardship under section 142M would apply.

Analysis:

239. This option would be a significant sanction, as offenders could get their car permanently removed and would not get any proceeds from the sale back. This would signal the seriousness of the offending.
240. Recent EBPC research indicates that interventions, such as post-event investigations and targeting penalties to the registered person, which increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit, are expected to have an effect on overall offending.⁷⁰
241. This option may provide additional incentive for the registered person to provide information to Police. It may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicles. This is supported by evidence, that suggests that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.⁷¹
242. As this option would permanently remove vehicles from the road, it may have a positive impact on road safety.
243. However, courts use the current discretionary confiscation power infrequently⁷². There is a risk that this lever will not be used either.
244. In instances of vehicles being financed, there is also a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person would have to continue paying the loan.
245. In terms of feasibility of implementation, this option would be similar to the status quo, as the ability for courts to confiscate vehicles already exists. However, there could be a potential increase in the volume of appeals, which would have an impact on the court system.

s 9(2)(h)

⁷⁰ EBPC, Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events (December 2020), pp. 4 and 26.

⁷¹ Ibid.

⁷² Between 1 January 2018 – 31 December 2021, only 1 confiscation order was given for failing/refusing to provide information to identify a driver.

This option has significant equity implications...

248. This option will have a greater impact on people without access to other transport options who may need their vehicle to travel to work, the supermarket, healthcare and other services.
249. It will also have a disproportionate impact in Māori, which will outweigh any potential road safety benefit. In particular, this option could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)⁷³. These areas are not usually well served by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.
250. This proposal presents risks, in terms of proportionality, as it may unfairly penalise people who are not involved in the commission of an offence (such as a parent who lent their vehicle to their child). In some circumstances, the registered person of a vehicle may also not be the vehicle's owner, or they may not have day-to-day control of the vehicle. For example, a parent who is the registered person of their grown child's vehicle. For people in these circumstances, the burden would be high.
251. There is also a risk that in certain circumstances, a registered person of a vehicle may be placed in danger by the request for information. For example, if the driver was a violent domestic partner.
252. This would also be a disproportionate response, when compared with other offences and penalties in the transport regime, for example, this would be more severe than the penalty for failure to stop. Forfeiture is also usually reserved for high end offences (e.g., maximum term of 5 years).
253. As with a vehicle forfeiture option for failing to stop offences, to mitigate risks, a review or appeal mechanism would be required. There is also the option of limiting forfeiture to more egregious situations, for example, where the registered person of a vehicle provides false or misleading information to prevent the identification of the fleeing driver.

⁷³ <https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/> - New Zealand 2018 Census of Populations and Dwellings.

How do the options to identify fleeing drivers compare to the status quo/counterfactual?

	Option One – Status quo	Option 2A – Amending the financial penalty for failing to provide information to a fixed penalty	Option 2B – Creating a liability for failing to stop for the owner of a vehicle	2C – Allowing Police to seize and impound a vehicle for 28 days for the owner failing or refusing to identify the driver of a fleeing driver event	Option 2D – Requiring permanent vehicle removal for failing to identify driver (mandatory confiscation for all offences – post-conviction)	Option 2E – Enabling permanent vehicle removal for failing to identify driver (discretionary forfeiture – post-conviction)
Effectiveness	0	+	++	++	++	+
		<p>May provide additional incentive for the registered person of the vehicle to provide information to Police.</p> <p>Evidence indicates that targeting penalties to the registered person increases offenders' perceptions that they will be identified and held to account.</p>	<p>Likely to be effective and encourage the registered person of the vehicle to take greater responsibility for their vehicles.</p> <p>Evidence indicates that targeting penalties to the registered person of the vehicle, increases offenders' perceptions that they will be identified and held to account.</p>	<p>Effective as evidence shows that swift and significant sanctions are a deterrent. It may have a positive impact on road safety. Vehicles would need to be returned if charges are not progressed.</p> <p>May have a positive impact on road safety.</p>	<p>Likely to be effective as a more severe penalty. Would incentivise the registered person of the vehicle to provide information.</p> <p>Evidence indicates that targeting penalties to the registered person of the vehicle, increases offenders' perceptions that they will be identified and held to account.</p> <p>May have a positive impact on road safety.</p>	<p>Likely to be effective as a more severe penalty.</p> <p>Evidence indicates that targeting penalties to the registered person increases offenders' perceptions that they will be identified and held to account.</p> <p>However, courts do not often use discretionary confiscation as a regulatory lever currently and are unlikely to use discretionary forfeiture.</p>
Operational feasibility	0	0	-	0	0	0
		<p>No substantive change to operational processes. May result in more unpaid fines i.e., debt collection.</p>	<p>No substantive change to operational processes as penalties are already applied to failing to stop offences. May increase court volumes due to increase in Category 2 offences (full hearing needed because of imprisonment penalty) and appeals.</p> <p>May undermine trust and confidence in Police and Justice system if considered too harsh.</p>	<p>Would help reduce the current operational challenges Police are facing in post-event investigations of fleeing drivers. But could exacerbate current issues in the towage and storage industry.</p>	<p>This could increase the number of reviews/appeals in the courts.</p>	<p>This could increase the number of reviews/appeals in the courts.</p>
BORA implications	0	0	■	■	■	■
	<p>No BORA implications. Removes ability for court to apply discretion.</p>	<p>■ s 9(2)(h)</p>	<p>■ s 9(2)(h)</p>	<p>■ s 9(2)(h)</p>	<p>■ s 9(2)(h)</p>	<p>■ s 9(2)(h)</p>

			s 9(2)(h)	s 9(2)(h)		
Equity	0	-- <i>Will have a greater impact on lower socio-economic groups who are unable to pay fixed fines. May result in debt collection. Road offences are a gateway offence for Māori and Pacific peoples so could have a greater impact of these population groups. This would remove the courts discretion to take into consideration any undue hardship that could be felt in passing down a financial penalty. This could lead to disproportionate penalties.</i>	-- <i>Would be a disproportionate response, when compared with other offences and penalties in the transport regime. This is likely to disproportionately impact those from lower socioeconomic backgrounds more as they may not understand the legislation or have the resources to appeal a decision.</i>	0 <i>Would have a greater impact on people without access to other transport options and lower socio-economic groups. Current review and appeal rights would apply.</i>	-- <i>This is a severe penalty and would be a disproportionate response, when compared with other offences and penalties in the transport regime. For example, this would be more severe than the penalty for failure to stop. Will have a greater impact on people without access to other transport options. Where vehicles are confiscated, the registered person of the vehicle may receive some proceeds from the sale. Current review and appeal rights would apply.</i>	-- <i>This is a severe penalty and would be a disproportionate response, when compared with other offences and penalties in the transport regime. For example, this would be more severe than the penalty for failure to stop. Will have a greater impact on people without access to other transport options and lower socio-economic groups. Current review and appeal rights would apply.</i>
Overall assessment	0	-	--	0	-	--

Key:

- worse than doing nothing/the status quo/counterfactual
- ++ much better than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual

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

None of the options scored higher than the status quo in the multi-criteria analysis table above, although option 2C is not considered worse than the status quo. As a result, there is no preferred option. However, Ministers requested further analysis on options 2A – Amending the financial penalty for failing to provide information to a fixed penalty, and 2C – Allowing Police to seize and impound a vehicle for 28 days for the owner of a vehicle failing or refusing to identify the driver of a fleeing driver event.

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What are the marginal costs and benefits of the option?

The tables below consider the marginal costs and benefits of Options 2A and 2C.

Option 2A – Amending the financial penalty for failing to provide information to a fixed penalty

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulators – Courts	Ongoing – This may lead to an increase in debt collection services required.	Medium	Medium – The transport system is a known justice sector pipeline in terms of fines not being paid and being deferred for collection.
Road Users	One-off – This would only apply if an offender refuses to cooperate and is convicted.	Medium	High – This would be a penalty that is passed down upon conviction.
Total monetised costs	N/A	Medium	N/A
Non-monetised costs	N/A	Low	N/A
Additional benefits of the preferred option compared to taking no action			
Regulators –courts	Ongoing – This could deter behaviour and reduce the number of convictions, reducing the time the court allocates to these cases.	Low	Low
Road Users	N/A	N/A	N/A
Total monetised benefits	Could reduce the number of cases that are referred to Court due to non-compliance with requests for information to identify a driver.	N/A	N/A

Non-monetised benefits	N/A	N/A	N/A
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2C – Allowing Police to seize and impound a vehicle for 28 days for the registered person of a vehicle failing or refusing to identify the driver of a fleeing driver event

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups – towage and storage operators	This may increase the number of abandoned vehicles that operators need to attempt to resell in order to recoup costs.	Medium	High – this is a known risk.
Regulators – Waka Kotahi and Police	Ongoing – Waka Kotahi will continue to pay a rebate of \$253 for abandoned vehicles.	High – This is funded through the Road Safety Activity Class which is overspent.	High – This issue prompted a 2019 increase in the rebate to alleviate concerns in the short-term.
Regulators –Police	One off cost for Police in relation to implementation. This would include updating internal policies and procedures, and providing frontline staff with guidance (would be aligned other proposals to extend the impoundment regime). This may include IT changes.	Medium	Medium
Road users	One-off – Offenders will be liable for the towage and storage fees.	Medium	High
Total monetised costs		Medium	Medium
Non-monetised costs		N/A	N/A

Additional benefits of the preferred option compared to taking no action			
Regulated groups – towage and storage operators	N/A	N/A	N/A
Regulators – Waka Kotahi and Police	New tool for Police to address behaviour of failing or refusing to provide information	Medium	High
Road users	On-going - may increase road safety impact, as it would remove vehicles from the road for the period of impoundment.	Medium	Medium – This has been demonstrated through the introduction of the 28 day impoundment for disqualified drivers.
Total monetised benefits		N/A	N/A
Non-monetised benefits		High	Medium

All options have a level of cost involved when compared to the status quo.

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Section 3: Delivering an option

How will the new arrangements be implemented?

254. These arrangements could possibly come into effect in 2023, to align the introduction of legislative changes to expand the impoundment regime proposed in the Criminal Activity Intervention Legislation Bill. Further work is needed to assess whether this would allow sufficient time for regulators to prepare for changes.
255. Police will adopt a project response to implementing the changes in legislation. A Senior Responsible Owner and project manager will be appointed to make sure all necessary changes to operational policy and guidelines, IT, and financial requirements are managed. The guidance for frontline Police on the application of the new impoundment provisions will ensure consistent implementation across the regions, where possible.
256. Waka Kotahi will be responsible for administering rebates to towage and storage operators for new impoundment provisions. This may require additional funding, as the full impact of these changes are realised.
257. Police will be responsible for ensuring the public is aware of the changes and the reasons for the changes and will undertake targeted public awareness activities to support its enforcement efforts. Waka Kotahi may also be involved.
258. Police will revise all relevant material and educational resources, fact sheets and website material. Waka Kotahi may also need to do so.
259. Police will enforce the proposed law changes and be responsible for investigations and prosecutions. Waka Kotahi will be responsible for de-registration and re-registration of disqualified drivers, and administering rebates for towage and storage providers.
260. In addition, Police and other agencies will try to influence the behaviour of fleeing drivers outside the offence and penalty regime. This could include helping with practical needs such as driver licensing or alcohol and drug treatment or to develop positive relationships between police and potential offenders. Evidence Based Policing Centre research suggests that these sorts of preventative measures may have a positive effect.⁷⁴

Implementation risks

261. There are certain risks associated with the implementation of these proposals. For example:
 - towage and storage operators not having sufficient capacity and having concerns about payment
 - exacerbating the shortage of towage and storage operators available and willing to undertake Police impoundments
 - an increase in the number of abandoned vehicles that have been impounded by Police
 - an increase in workload for Police Prosecution Service
 - an increase in the number of people convicted on prison sentences. This could result in increased prison beds per annum

⁷⁴ Evidence Based Policing Centre *Understanding the motivations of fleeing Drivers – Interventions to reduce fleeing driver events* (December 2020).

- an increase in community sentences
- an increase in the number of people disqualified
- an increase in the volume of appeals, which would impact the courts
- an increased impact on Waka Kotahi licence registration system
- potential delays to the booking of practical driver licence tests
- potential scamming of vehicle registration system to avoid identification of the registered person of the vehicle
- increase in stolen licence plates/ vehicles

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

262. Te Manatū Waka will monitor the implementation of new impoundment of vehicle provisions from a regulatory stewardship perspective and consider any impact that this may have on the regulated activities and fees of the towage and storage industry.
263. Police will continue its current monitoring of resolution and events and Waka Kotahi will continue monitoring vehicle registration. Work may possibly be undertaken to establish a link between Police and Waka Kotahi on vehicle of sale notices and prohibition of sale of vehicles.
264. The effectiveness of any amendments will be monitored by Police using the following indicators:
- Reduction in number of fleeing driver events
 - Increase in number of offenders identified and apprehended for a fleeing driver event
 - Reduction in number of crashes from fleeing driver events
 - Reduction in number of people injured in fleeing driver events
 - Reduction in number of people killed in fleeing driver events
 - Number of prosecutions for failing to stop and failing to provide information
 - Nature and size of penalties.
265. Regular reports will be made to the Road to Zero Ministerial Oversight Group, which is responsible for monitoring the delivery of commitments, activities, and performance required to deliver Road to Zero.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Responding to Fleeing Drivers and Intimidating Behaviour using Vehicles

Portfolios Police / Transport / Justice

On 21 November 2022, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

1 **noted** that in July 2022, Cabinet invited the Minister of Police, in consultation with the Minister of Justice and the Minister of Transport, to report back to Cabinet on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22- MIN-0264];

2 s 9(2)(f)(iv)

3 s 9(2)(f)(iv)

Penalties for fleeing drivers

4 **agreed** to amend the Land Transport Act 1998 to increase the period of driver licence disqualification for a second offence of failing to stop or remain stopped as signalled, requested, or required, from one year (current) to one year to two years;

5 **agreed in principle** to amend the Land Transport Act 1998 to allow an enforcement officer to seize and impound, or seize and authorise the impoundment of, a motor vehicle for six months if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop or remain stopped as signalled, requested, or required;

6 **agreed** to amend the Sentencing Act 2002 to enable a Court to make an order that a vehicle be forfeited on conviction for offences relating to a failure to stop or remain stopped as signalled, requested, or required;

7 **noted** that the decision in paragraph 6 above will replace the existing power of the Court to order a vehicle be confiscated on conviction for offences relating to a failure to stop, or remain stopped as signalled, requested or required;

Identification of fleeing drivers

- 8 **agreed** to amend the Land Transport Act 1998 to allow an enforcement officer to seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds the person has failed, refused, or provided false or misleading information to a request under section 118(4), and if Police form a reasonable belief that impounding the vehicle is necessary to preserve road safety;

Next steps

- 9 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions, including any necessary consequential amendments, savings and transitional provisions;
- 10 **authorised** the Minister of Police, Minister of Transport and Minister of Justice to make any further policy decisions that arise during the drafting process, provided they are consistent with the direction agreed by Cabinet;
- 11 **agreed** to add a Road Safety Bill to the 2022 legislative programme with a category 5 priority (instructions to be provided to Parliamentary Counsel Office in the year);
- 12 **invited** the Minister of Police to update the Cabinet Social Wellbeing Committee on the timeframe for the review of the policy relating to fleeing drivers;
- 13 s 9(2)(f)(iv) [REDACTED]

Rachel Hayward
Secretary of the Cabinet