

Vehicle Confiscation and Seizure Bill

Government Bill

Explanatory note

General policy statement

Overview

The Vehicle Confiscation and Seizure Bill accompanies the Land Transport (Enforcement Powers) Amendment Bill to form the main set of the Government's legislative response to illegal street racing.

The Vehicle Confiscation and Seizure Bill is an omnibus Bill, comprising 3 Parts, which amend the Sentencing Act 2002, the Summary Proceedings Act 1957, and the Privacy Act 1993.

The purpose of the Bill is to reduce traffic offending by—

- strengthening the powers of the courts to order the confiscation of motor vehicles:
- empowering the courts to order the destruction of motor vehicles used by persistent illegal street racing offenders:
- strengthening the provisions to seize motor vehicles to enforce the collection of unpaid fines and reparation.

Part 1

Amendments to Sentencing Act 2002

Part 1 of the Bill makes 2 sets of amendments to sections 127 to 142 of the Sentencing Act 2002, which provide for the confiscation of motor vehicles.

First, *Part 1* authorises the confiscation of vehicles that an offender does not own or have an interest in, but which a third party, who has been warned about the consequences of the offender continuing to offend in their vehicle, owns or has an interest in.

Second, *Part 1* establishes a new confiscation and destruction order, which the court can impose as a new penalty for repeat illegal street racing offences. This will be a last resort option to deter and punish the most serious repeat offenders and would follow 2 prior convictions for such offences within the preceding 4 years. The orders would only be available in regard to offences committed after the commencement of the legislation.

The amendments also adjust the distribution of proceeds from the sale of confiscated vehicles, and make the offender liable for the payment of the costs of confiscation and sale that are not met from the sale proceeds (to be enforced as an unpaid fine).

Part 2

Amendments to Summary Proceedings Act 1957

Part 2 amends Part 3 of the Summary Proceedings Act 1957, which provides for the enforcement of fines and reparation. The amendments enable all vehicles owned by, apparently owned by, or in limited circumstances used by people or organisations with overdue fines and reparation to be seized and sold to pay these penalties. Among these amendments are changes to the third party claim process. The purpose of the new vehicle seizure provisions is to reduce traffic offending opportunities, as well as to enhance the collection of overdue fines and reparation.

Part 3

Amendment to Privacy Act 1993

Part 3 amends Schedule 5 of the Privacy Act 1993 to authorise the release of Police records relating to impounded vehicles to the Ministry of Justice to facilitate the seizure of vehicles from impoundment yards under court warrants.

Clause by clause analysis

Clause 1 is the Title clause. It is intended that the Bill will be divided, at the committee of the whole House stage, into 3 separate Bills.

Clause 2 is the commencement clause. The Bill will come into force on 1 December 2009.

Part 1

Amendments to Sentencing Act 2002

Clause 3 states that *Part 1* amends the Sentencing Act 2002 (the **principal Act**).

Clause 4 states the purpose of *Part 1*. This is to reduce traffic offending by giving the courts more power to order the confiscation of motor vehicles and to enable them to order the destruction of motor vehicles used by persistent illegal street racing offenders.

Clause 5 defines terms used in this Part. A key definition is substitute for the offender. A person becomes a substitute if, following the receipt of a written caution about the use of the person's vehicle by an offender in the commission of a specified offence, a motor vehicle of the person is, within 4 years after the commission of that offence, used again by the offender to commit a further specified offence.

Clause 6 amends section 128 of the principal Act, which relates to the confiscation of motor vehicles following an offender's conviction for certain offences. The effect of the amendment is to make a motor vehicle owned by a substitute for the offender liable to confiscation if the motor vehicle has been involved in a relevant offence committed by the offender. The court must not order the confiscation of a vehicle owned by a substitute if the substitute could not reasonably have known that the offender would commit the offence or if the substitute took all reasonable steps to prevent the commission of the offence.

Clause 7 amends section 129 of the principal Act, which generally requires the confiscation of a motor vehicle after the commission of a second offence, to cover the case where an offender commits a repeated street racing offence (ie, an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998) but the motor vehicle concerned is not confiscated. In that case, warning notices have to be sent to creditors with an encumbrance over the motor vehicle. The creditors must be told that any motor vehicle owned by the offender or a substitute is liable to be confiscated and destroyed if the offender commits another street racing offence within 4 years from the commission of the first offence.

Clause 8 inserts *new sections 129A to 129E*.

New section 129A enables courts to order the destruction of motor vehicles where an offender who is convicted of a street racing offence has 2 previous convictions for similar offences committed within the last 4 years. The court may order the destruction of a motor vehicle if the offender was driving it, or was in charge of it, at the material time and if it is owned by the offender or by a substitute for the offender. The court must not order the destruction of the motor vehicle if it will result in extreme hardship to the offender or undue hardship to any other person, including to a substitute.

New section 129B deals with the case where an offender commits a specified offence involving a motor vehicle, but does not own the motor vehicle. In that case, the owner of the motor vehicle must be served with a written caution, unless the court is satisfied of certain matters, namely that the vehicle was stolen or converted at the material time, that the person did not own or have an interest in the vehicle at the material time, that the person holds an encumbrance over the vehicle but has no other relationship with the offender, or that the vehicle was let on hire at the material time.

The written caution must warn the owner that, if the offender is convicted of a further offence that involves a motor vehicle owned by the owner, the motor vehicle is liable to be confiscated or, if the offender persists in committing street racing offences, confiscated and destroyed.

New section 129C enables persons served with written cautions to have the service of the caution reviewed by the court. The grounds for a review are that the vehicle was stolen or converted at the material time, that the person did not own or have an interest in the vehicle

at the material time, that the person holds an encumbrance over the vehicle but has no other relationship with the offender, or that the vehicle was let on hire at the material time. The court may cancel the written caution and in that case the written caution is deemed not to have been served on the person.

New section 129D provides that if all of the convictions in respect of which a written caution has been served on a person are quashed, and no corresponding convictions are substituted, the written caution ceases to have effect.

New section 129E provides that if the motor vehicle of a person is confiscated on the basis that the person is a substitute for an offender, the person may appeal against the order on a number of grounds, which include those available on a review under *new section 129C*, as well as that the person took all reasonable steps to prevent the commission of the offence or could not reasonably have known that the offence would be committed.

Clause 9 makes consequential and drafting changes to section 130 of the principal Act, which enables the court to order declarations of ownership to be completed.

Clause 10 inserts a *new section 130A* into the principal Act. The new section enables the court to set aside a disposition of a motor vehicle made by a substitute for an offender after the substitute is served with a written caution. The power may be exercised if the offender to whom the written caution relates is again convicted of an offence that would permit the court to order the confiscation of a motor vehicle owned by the offender, and the court is not satisfied that the disposition of the motor vehicle was made by the substitute with a bona fide intention to dispose permanently of his or her ownership in the vehicle.

Clause 11 amends section 131 of the principal Act, which enables confiscations of motor vehicles to proceed even though the offender has disposed of the motor vehicle involved in the offence if the court is not satisfied that the disposition of the motor vehicle was made in good faith. The amendment extends section 131 to dispositions made by a substitute for an offender and also includes a reference to the power to order the confiscation and destruction of motor vehicles to be conferred by *new section 129A*.

Clause 12 consequentially amends section 132 of the principal Act, which relates to the enforcement of confiscation orders.

Clause 13 amends section 136 of the principal Act, which relates to contravention of the prohibitions against acquiring interests in motor vehicles within 12 months after the court orders the confiscation of a motor vehicle. The section empowers the court to order the confiscation of the illegally acquired vehicle. The amendment empowers the court to order the destruction of the illegally acquired vehicle in any case where the original vehicle was ordered to be destroyed.

Clause 14 inserts a *new section 136A* into the principal Act. The new section requires the Registrar to apply for the deregistration of any motor vehicle that is ordered to be destroyed.

Clause 15 amends section 137 of the principal Act, which relates to the sale of confiscated motor vehicles. The existing section permits the Registrar to arrange for the sale of the motor vehicle by public auction or in any other manner that the court may direct. The amendment enables sales in any manner the Registrar thinks fit, subject to any direction by the court. The amendment also re-enacts the provision that sets out priorities for applying the proceeds of a motor vehicle sold by the court. The substantive change made by the amendment is to give the towing and storage costs incurred in impounding a motor vehicle under the Land Transport Act 1998 priority over all other payments. A new provision is added concerning the proceeds from the sale of a motor vehicle owned by a substitute for the offender. Those proceeds may be applied in payment of only those fines and reparation imposed for offences committed by the offender in a vehicle that, at the material time, was owned by the substitute. They may thus not be applied to pay for fines or reparation imposed for offences committed in other circumstances, for example for offences the offender committed while using the offender's own vehicle.

Clause 16 inserts *new sections 137A to 137C*, which are about the disposal of motor vehicles ordered to be destroyed. *New section 137A* provides that the sale of a motor vehicle ordered to be destroyed is subject to a condition that the purchaser dismantle the motor vehicle for any saleable parts and destroy the remainder of the motor vehicle. That requirement must be complied with within 30 working days after the date of the sale, or within any longer period that the Registrar specifies in writing.

New section 137B provides that where the requirement to dismantle and destroy a motor vehicle is not complied with, the Registrar may repossess the vehicle.

New section 137C provides that a repossessed motor vehicle is then in turn sold, subject to the requirement to dismantle and destroy it. The sale proceeds are applied, first, in recouping the costs of sale, and any balance is given to the original purchaser.

Clause 17 consequentially amends section 138 of the principal Act, which relates to the disposal of unsaleable confiscated vehicles.

Clause 18 inserts a *new section 138A* into the principal Act. The new section makes the offender liable for the costs of sale and any costs incurred in impounding the motor vehicle under the Land Transport Act 1998, to the extent that the proceeds of a sale conducted by the court are inadequate to meet those costs.

Clause 19 substitutes a *new section 140* of the principal Act, which concerns the transfer of confiscated motor vehicles that are subject to leasing agreements. The substituted section continues the substance of the existing provision, which permits the return of leased vehicles to the lessors, but excludes the return of vehicles that have been ordered to be destroyed. It also excludes lessors who are substitutes for offenders. Further, any costs of impounding a motor vehicle under the Land Transport Act 1998 have to be paid before the vehicle is returned to the lessor.

Clause 20 amends section 141 of the principal Act, which protects the rights of secured creditors. The amendment excludes substitutes for offenders from the range of persons who may be granted relief under this section. It also requires any costs of impounding a motor vehicle under the Land Transport Act 1998 to be paid before the vehicle is returned to the creditor.

Clause 21 consequentially amends section 142 of the principal Act, which permits the cancellation of orders on an application by a bona fide purchaser.

Clause 22 provides that *new sections 129(6) to (8), 129A, and 129B*, which respectively provide for warning notices to secured creditors, the destruction of motor vehicles, and for the service of written cautions on owners of vehicles, will not apply in respect of offences committed before the commencement of those sections.

Part 2

Amendments to Summary Proceedings Act 1957

Clause 23 states that *Part 2* amends the Summary Proceedings Act 1957 (the **principal Act**).

Clause 24 states the purpose of *Part 2*. This is to reduce traffic offending by strengthening the powers of the courts to seize motor vehicles to enforce the collection of unpaid fines and reparation.

Clause 25 inserts a *new section 93A* into the principal Act. The inserted section is an application provision that clarifies that a separate regime on the seizure and disposal of motor vehicles is set out in *new sections 100A to 100V*, as inserted by *clause 28*.

Clause 26 repeals section 94(3) of the principal Act concerning the immobilisation of seized motor vehicles. The provision is relocated in *new section 100E(5)*.

Clause 27 repeals sections 94A and 94B of the principal Act, concerning the immobilisation of motor vehicles and the duty of the Registrar to check the personal property securities register. These sections are relocated as *new sections 100I and 100J* respectively.

Clause 28 inserts *new sections 100A to 100V*.

New section 100A sets out definitions used in *new sections 100B to 100V*. A key definition is substitute for the defendant. A person becomes a substitute if, following the receipt of a written caution about the use of the person's vehicle by a defendant in the commission of a traffic offence, a motor vehicle of the person is, within 4 years after the commission of that offence, used again by the defendant to commit a further traffic offence.

New section 100B provides that if a defendant defaults in paying any fine payable for a traffic offence committed while using a motor vehicle owned by another person, the Registrar may issue a written caution to the owner of the motor vehicle.

New section 100C permits a person served with a written caution to have the written caution reviewed by a District Court Judge. The grounds of review are that the vehicle was stolen or converted, that the applicant did not own or have an interest in the vehicle at the material time, that the applicant is a secured creditor but has no other relationship with the defendant, or that the vehicle was let on hire.

New section 100D provides that if the fine in respect of which a written caution is served is quashed or set aside, the written caution ceases to have effect.

New section 100E provides for the seizure of motor vehicles under warrants issued by a court because of a default in the payment of fines. The section allows the seizure of a vehicle owned by a substitute for a defendant. When a motor vehicle is seized the defendant or the substitute must be given a notice in the prescribed form. That notice may be sent to the defendant or the substitute by ordinary post, fax, email, or other electronic means.

New section 100F allows motor vehicles to be seized to enforce fines while they are impounded, under the Land Transport Act 1998, for the 28-day period prescribed by that Act. However, they must have been impounded under that Act for at least 14 days before they can be seized. The seizure for fines enforcement purposes is not affected by any pending appeals under the Land Transport Act 1998.

New section 100G states that a motor vehicle may be seized, not just to recover fines, but also to reduce opportunities for traffic offending. Thus a vehicle may be seized even though the value of the vehicle is likely to be less than the amount of the overdue fines.

New section 100H requires the bailiff or constable executing a warrant to ensure that a seized motor vehicle is taken to the Registrar or kept by another person specified by the Registrar. If a vehicle fails to comply with registration or licensing requirements, the vehicle may still be towed to a place specified by the Registrar.

New section 100I re-enacts, in similar terms, section 94A of the principal Act, which authorises vehicles to be immobilised for fines enforcement purposes. The offence provision has been expanded to cover the removal of immobilised vehicles or any parts of, or property in, those vehicles.

New section 100J re-enacts, without substantive change, section 94B of the principal Act, which requires the Registrar to check if a seized motor vehicle is shown on the personal property securities register.

New section 100K authorises the return of a seized motor vehicle to the person from whom it was seized or to the person apparently lawfully entitled to it. This may be done if there are no claims pending by owners, lessors, or creditors, and the fine and towage and storage charges are paid. Special rules apply in the case of a vehicle seized

while impounded for the 28-day period under the Land Transport Act 1998. Such a vehicle may not be released before the end of the 28-day period. However, if a registered owner of an impounded vehicle wins an appeal, under section 102 or 110 of the Land Transport Act 1998, before the expiry of the 28-day period, then the Registrar must release the vehicle to the registered owner.

New section 100L authorises the sale by the court of a motor vehicle if any fine remains unpaid. A vehicle may be sold even though it fails to comply with registration and licensing requirements. The purchaser may tow the vehicle away and is under an obligation to comply with all requirements. Before selling a vehicle that cannot be made roadworthy, the Registrar must have the vehicle deregistered. The sale of a vehicle that has been seized while impounded under the Land Transport Act 1998 is not affected by any appeal that is pending after the 28-day period for which vehicles are impounded under that Act or by any appeal determined after that period. If the costs of impounding a vehicle under the Land Transport Act 1998 remain outstanding on the 38th day after the vehicle was impounded, the vehicle may be sold to recover those costs, even though all fines have been paid.

New section 100M requires the Registrar to defer the sale of a motor vehicle if the storage costs are paid.

New section 100N provides for the application of the proceeds of sale of a motor vehicle sold by the court. The order of priority is first, if the vehicle has been impounded under the Land Transport Act 1998, any outstanding impoundment costs; secondly, the costs of the sale; thirdly, debts owed to secured creditors; fourthly, any reparation owed by the defendant; fifthly, the overdue fine. Any remainder is returned to the defendant or where the vehicle was seized from the substitute for the defendant, to the substitute. Where the vehicle was seized from a substitute, the proceeds of sale may be applied only to those fines and reparation that the defendant incurred while using the substitute's vehicle.

New section 100O provides for remission of the costs of sale and fines where the sale of a motor vehicle does not result in a reduction of the defendant's fine by more than \$100. In such a case, the Registrar must remit the costs of the sale and so much of the fine as will achieve a reduction of \$100.

New section 100P requires the Registrar to release a motor vehicle to the owner of the vehicle where the Registrar is satisfied that the defendant does not own the vehicle and that the owner is neither a substitute nor a nominee for the defendant or the substitute. Where the position is doubtful, the Registrar must issue a summons so that the matter can be determined by the court. Pending the determination by the court, the Registrar may release the vehicle to the defendant or to the substitute if a deposit is paid or security is provided for the value of the seized vehicle or the overdue fine, including the seizure costs, the costs of storage, and any impoundment costs, whichever is the lesser sum.

New section 100Q provides for appeals by substitutes against the seizure of their motor vehicles. The grounds of appeal are that the person did not own or have an interest in the vehicle at the material time, that the vehicle was stolen or converted at the material time, that the person took all reasonable steps to prevent the defendant from committing the offence, that the person had not been served with a written caution before the commission of the offence, that the person holds an encumbrance over the vehicle but has no other relationship with the defendant, or that the vehicle was let on hire at the material time.

New section 100R provides for the determination of claims by owners. The court may release a motor vehicle that has not yet been sold if the court is satisfied that the defendant does not have an interest in the motor vehicle and that the claimant is neither a substitute for the defendant nor a nominee for the defendant or for the substitute. A person treated as a substitute for a defendant may have his or her vehicle returned if the court is satisfied that the person did not own or have an interest in the vehicle at the material time, that the vehicle was stolen or converted at the material time, that the person is a party to an encumbrance relating to the vehicle but has no other relationship with the defendant, or that the vehicle was let on hire at the material time.

New section 100S authorises the court to return a seized motor vehicle that is leased to the lessor. Defendants, substitutes for defendants, or nominees for defendants or substitutes are not entitled to the return of vehicles under this provision.

New section 100T authorises the court to release to a secured creditor a seized motor vehicle that has not yet been sold. The creditor may

not be the defendant or a substitute for the defendant. The creditor is required to sell the vehicle and account for the proceeds of sale to the Registrar. After taking out of the proceeds the costs of sale and the amount owed to the creditor, the creditor must pay the balance into court.

New section 100U deals with the case where the creditor fails to comply with a requirement. If the creditor fails to sell the motor vehicle, the vehicle must be seized from the creditor. If the creditor fails to pay the required sum into court, that sum may be recovered from the creditor as a debt due to the Crown.

New section 100V enables the court to require defendants to compensate persons who suffer losses through sales of seized motor vehicles by the court. Substitutes for defendants or nominees for defendants or substitutes are not eligible to be compensated under this section.

Part 3

Amendment to Privacy Act

Clause 29 states that *Part 3* amends the Privacy Act 1993.

Clause 30 and *the Schedule* amend Schedule 5 of the Privacy Act 1993, which authorises agencies to access law enforcement information held by other agencies. The amendment gives the Ministry of Justice access to police records consisting of the particulars of vehicles impounded under the Land Transport Act 1998 and the name, address, telephone number, occupation, driver licence number, and date of birth of every registered owner of the vehicle and of any other person who was driving the vehicle immediately before it was impounded. The Ministry's access to those records is limited to action taken, under Part 3 of the Summary Proceedings Act 1957, to enforce the payment of fines, reparation, and related payments.

Regulatory impact statement

Executive summary

This Bill is targeted at reducing traffic offending in general and illegal street racing in particular by—

- strengthening the powers of the courts to order the confiscation of motor vehicles; and

- empowering the courts to order the destruction of motor vehicles used by persistent illegal street racing offenders; and
- strengthening the provisions to seize motor vehicles to enforce the collection of unpaid fines and reparation.

Adequacy statement

This regulatory impact statement is based on the RIS submitted at the time Cabinet approval of the policy of this Bill and its companion Bill amending the Land Transport Act 1998 was sought.

Status quo and problem

Illegal street racing has been an issue around the country for many years. The harm from illegal street racing can be broken down into three categories: road safety, noise, and public nuisance/disorder.

Between 2003–2007 there were on average 101 crashes a year from wider street racing activity. These crashes resulted in (on average) 10 deaths, 46 serious injuries, and 125 minor injuries a year.

Apprehending a driver or drivers in the act of an illegal street racing activity occurs infrequently and randomly. In the 2003–2007 period, there were on average 1 659 convictions for illegal street racing activity a year. It is hard to know the true extent of illegal street racing as the participants are transitory and highly organised.

Current penalties for illegal street racing are disqualification and a fine or jail. If a person is convicted twice in 4 years for an illegal street racing offence, the court must order that their vehicle be confiscated unless it will result in extreme hardship to the offender or undue hardship to any other person. Despite confiscation being a discretionary penalty after conviction for 1 qualifying offence and a mandatory penalty after 2 convictions, the actual rate of confiscations is very low. In 2006, there were 9 600 offences in which mandatory confiscation applied, and over 50 000 in which discretionary confiscation applied. There were only 1 062 confiscation orders granted. This puts the current rate of confiscation at less than 2% (or 1 in 10 for mandatory confiscations).

Objectives

The central objective is to significantly reduce the harm and nuisance to communities caused by illegal street racers.

Alternative options

The non-legislative option of local authorities designating areas for burnout pads and racing was considered by officials in early discussions but not progressed.

Local authorities currently have the power to build burnout pads and race tracks. Experience of this type of intervention in the past has done little to reduce or rectify the illegal street racing problem.

Preferred option

The preferred option is to introduce 2 Bills to deal with different aspects of the illegal street racing problem; the Land Transport (Enforcement Powers) Amendment Bill and the Vehicle Confiscation and Seizure Bill.

The Vehicle Confiscation and Seizure Bill sets out to address a range of tactics that offenders use to avoid confiscation of vehicles that they use and to introduce a new penalty involving the destruction of the vehicle to deter and punish the most serious repeat offenders. There are provisions—

- expanding the vehicle confiscation provisions of the Sentencing Act 2002 to include substitutes for the offender, and registered owners other than the offender in some circumstances;
- establishing a vehicle confiscation and destruction regime for offenders who have committed a third illegal racing offence within 4 years;
- extending the vehicle seizure provisions of the Summary Proceedings Act 1957 for the payment of outstanding monetary penalties;
- amending Schedule 5 of the Privacy Act 1993 to facilitate the exchange of information regarding impounded vehicles.

Benefits and costs to consumers and wider society

The threat of vehicle confiscation and destruction will deter, and reduce the opportunities to use vehicles for, street racing offending.

As the incidence of illegal street racing decline, Police will be able to reallocate their resources to other front line duties.

It is not expected that there will be any costs to consumers or wider communities from proposals in this package.

Benefits and compliance costs to business

There will be benefits to businesses that have suffered owing to illegal street racing activities in their community, particularly motels, hotels, animal parks, and hospitals. It would be expected that businesses will suffer less disruption from noise and unruly gatherings associated with illegal street racing.

It is not expected that there will be any costs to businesses.

If rates of vehicle confiscation increase, finance companies may be more inclined to undertake rigorous background checks on vehicle owners before financing a vehicle, as they may want to make a judgement on the risk of the vehicle being confiscated. However, as confiscation is not a new sanction, this should not be an additional burden on finance companies.

Benefits and costs to Government

Road safety is an ongoing concern for the Government. On average there are approximately 10 deaths from illegal street racing a year, with a social cost of over \$30 million. Proposals aimed at reducing the incidence of illegal street racing should impact on the number of illegal street racing deaths.

The amendments to the Summary Proceedings Act 1957 would increase the number of vehicles seized and sold to pay overdue fines and reparation.

Specific costs to the Government in Vehicle Confiscation and Seizure Bill*Vehicle confiscation—Vote Courts*

Currently the courts order the confiscation of approximately 1 000 vehicles out of a potential 10 000 per year (this relates to mandatory confiscations only). An increase in Vote Courts is sought in anticipation that the courts will order the confiscation of an additional 3 000 vehicles annually.

The previous Cabinet agreed, subject to funding approval, to authorise the Ministry of Justice to pay any prescribed impoundment costs incurred on a vehicle at the time of confiscation, and for the Ministry to be reimbursed from the sale proceeds or when this money is col-

lected from the defendant. (SDC Min (08)14/10 para 2, confirmed by Cab Min (08) 35/5).

The cost to Vote Courts of an increase in the number of confiscations by 3 000 per year is estimated to be \$0.473 million (operating expenditure only) in year 1 and \$1.478 million (operating expenditure only) in year 2 and outyears. There will also be some establishment costs in 2009/10 (\$0.612 million capital expenditure).

Confiscations—Net Crown revenue

The operational change being made to the confiscations regime will enable any unmet confiscation costs to be collected by the Court as a fine. Based on an additional 3 000 confiscations each year, Crown revenue of approximately \$1.2 million is expected. The Ministry of Justice estimates that 80% of this amount will be collected over a 10-year period as Crown revenue.

Seizures—Vote Courts

Currently, the Ministry of Justice seizes approximately 2 500 vehicles per year to ensure the payment of unpaid fines. The cost to Vote Courts of an additional 500 vehicle seizures per year is estimated to be \$0.541 million (operating expenditure only) in year 1, increasing to \$0.728 million (operating expenditure only) in outyears. There will also be some establishment costs in 2009/10 (capital expenditure).

Confiscation and destruction orders—Vote Courts

The Ministry of Justice does not expect the new order to be a significant ongoing cost to the Crown. There would be a one-off \$80,000 cost to Vote Courts to establish the new orders. This cost is included with the confiscations costs above. Current vehicle confiscation costs average \$750 per vehicle. The law provides for these costs to be recovered from the sale of these vehicles (although many vehicles' values are less than the confiscation costs and these costs must be absorbed by the courts).

While less may be recovered from vehicles intended for destruction, the number of orders is likely to be small. In 2007, only 10 offenders were convicted of a third illegal street racing offence within 4 years.

Impact on existing regulation

The following legislation will be amended through the Vehicle Confiscation and Seizure Bill:

- Sentencing Act 2002:
- Summary Proceedings Act 1957:
- Privacy Act 1993 (Schedule 5).

Implementation and review

The introduction of these measures will be implemented progressively, on given dates, with all provisions coming into force by 1 April 2010.

Media announcements will be made prior to any changes coming into force. There is no specific advertising programme suggested.

The Police and courts will actively enforce these new provisions. All relevant agencies will monitor the effectiveness of the new measures.

A review of the effectiveness would be able to take place 2 or 3 years after implementation.

Consultation

The following agencies were consulted on the proposals in this RIS: Ministry of Transport, New Zealand Police, Ministry of Justice, New Zealand Transport Agency, Department of Internal Affairs, the Treasury, Ministry of Economic Development, Department of Corrections, Ministry of Youth Development, Local Government New Zealand, and Ministry of Social Development.

The following agencies were informed of the proposals: the Department of the Prime Minister and Cabinet, Te Puni Kōkiri, and the Ministry of Pacific Island Affairs.

Hon Judith Collins

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Part 3

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Schedule

Schedule 5 amended

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Vehicle Confiscation and Seizure Act **2009**.

2 Commencement

This Act comes into force on **1 December 2009**.

5

Part 1**Amendments to Sentencing Act 2002****3 Principal Act amended**

This **Part** amends the Sentencing Act 2002.

4 Purpose

10

The purpose of this **Part** is to reduce traffic offending by—

- (a) strengthening the powers of the courts to order the confiscation of motor vehicles:
- (b) empowering the courts to order the destruction of motor vehicles used by persistent illegal street racing offenders.

15

5 Interpretation of terms used in sections 128 to 142

- (1) Section 127(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**impoundment costs**, in relation to a motor vehicle that has been confiscated while impounded under the Land Transport Act 1998, means the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167 of that Act, and, where those fees and charges have already been paid by the chief executive of the Ministry of Justice, means the amount required to reimburse the chief executive for that payment”

20

“**registered owner**, in relation to a motor vehicle, means the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of the vehicle, and where several persons are so registered, means any one of those persons”

25

30

“**written caution** means a caution issued under **section 129B**.”

(2) Section 127 is amended by adding the following subsection:

“(3) For the purposes of sections 128 to 142, a person is, in relation to an offender, a **substitute for the offender** or a **substitute** if— 5

“(a) the person is served with a written caution, under **section 129B**, about an offence committed by the offender; and

“(b) within 4 years after the date of the commission of the offence for which that written caution was served, the offender commits a further offence specified in section 128(1) involving a motor vehicle that, at the time of the commission of that offence, the person owns or has an interest in.” 10 15

6 Confiscation of motor vehicle

(1) Section 128 is amended by repealing subsection (2) and substituting the following subsection:

“(2) A court may exercise the power in subsection (3) if a person is convicted of an offence referred to in subsection (1) and the court by or before which the offender is convicted is satisfied— 20

“(a) that a motor vehicle—

“(i) was used to commit or facilitate the commission of the offence, whether or not the offender was the driver or person in charge; or 25

“(ii) in the case of an offence against any of the provisions of sections 35(1)(a) and (b), 36(1)(a), 36A(1)(a) and (c), 38(1), 39(1), and 56 to 62 of the Land Transport Act 1998, was being driven by, or in the charge of, the offender at the material time; or 30

“(iii) was used by the offender, whether or not the offender was the driver or person in charge, to facilitate the offender’s flight or avoid his or her detection or arrest after the commission of the offence; and 35

- “(b) that, at the time of the conviction, the offender or a substitute for the offender owns the motor vehicle or has an interest in the motor vehicle.”
- (2) Section 128 is amended by inserting the following subsection after subsection (3): 5
- “(3A) The court must not make an order under this section in respect of a motor vehicle that a substitute for an offender owns or has an interest in if satisfied that—
- “(a) the substitute did not know, and could not reasonably have known, that the offender would commit the offence or offences; or 10
- “(b) the substitute took all reasonable steps to prevent the offender from committing the offence or offences.”
- (3) Section 128(5)(a) is amended by inserting “or, as the case requires, to the substitute for the offender” after “the offender”. 15
- (4) Section 128(5)(c) is amended by inserting “, or, as the case requires, the interest of the substitute for the offender,” after “offender’s interest”.
- 7 Confiscation of motor vehicle after second offence**
- Section 129 is amended by adding the following subsections: 20
- “(6) This subsection applies if—
- “(a) the first offence and the second offence are each against section 36A(1)(a) or (c) of the Land Transport Act 1998; and
- “(b) the court by or before which the offender is convicted of the second offence is satisfied that a motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has any interest was being driven by, or in the charge of, the offender at the material time; and 25 30
- “(c) the court does not order the confiscation of the motor vehicle.
- “(7) If **subsection (6)** applies, the Registrar must—
- “(a) check whether a financing statement has been registered in respect of the motor vehicle on the personal property securities register kept under the Personal Property Securities Act 1999; and 35

- “(b) issue a warning notice stating that any motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has an interest is liable to be confiscated and destroyed if the offender commits another offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 before the expiry of 4 years from the commission of the first offence; and 5
 - “(c) send the warning notice, by ordinary post, to every person (other than the offender or the substitute) who the Registrar believes is a party to an encumbrance relating to the motor vehicle. 10
- “(8) The jurisdiction of a court to make a confiscation and destruction order under section **129A or 136(4)** or the validity of any order made under those sections is not affected by a failure to comply with **subsection (7)**.” 15

8 New sections 129A to 129E inserted

The following sections are inserted after section 129:

- “**129A Confiscation and destruction after third illegal street racing offence** 20
- “(1) This section applies if—
- “(a) an offender commits an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 (the **current offence**); and
 - “(b) the offender has previously been convicted of 2 offences (the **previous offences**) against section 36A(1)(a) or (c) of the Land Transport Act 1998 that were each committed within the period of 4 years before the commission of the current offence. 25
- “(2) For the purpose of **subsection (1)**, it does not matter whether or not the offences are of the same kind, but the current offence and each of the previous offences must arise from different incidents. 30
- “(3) The court by or before which the offender is convicted of the current offence may order the confiscation and destruction of any motor vehicle if satisfied that the offender was driving, or was in charge of, the motor vehicle at the material time and that— 35

- “(a) the offender owns or has any interest in the motor vehicle; or
- “(b) a substitute for the offender owns or has an interest in the motor vehicle if the written caution served on the substitute was issued in respect of an offence specified in **subsection (1)(a)**. 5
- “(4) The court must not make an order under **subsection (3)** if it will result in extreme hardship to the offender or undue hardship to any other person, including, without limitation, to any substitute for the offender. 10
- “129B Written caution to persons with interest in motor vehicles involved in offences**
- “(1) **Subsection (2)** applies whenever—
- “(a) a court convicts an offender of an offence specified in section 128(1) involving a motor vehicle; and 15
- “(b) the court is satisfied the offence was committed in circumstances that would permit or require the confiscation of the motor vehicle under section 128, 129, or **129A** if the offender owned or had an interest in it at the time of conviction; and 20
- “(c) it appears to the court that the offender does not own or have an interest in the motor vehicle.
- “(2) The court by or before which the offender is convicted must order that a written caution be served on every person (other than the offender) who is a registered owner of the motor vehicle or who the court believes owns or has an interest in the motor vehicle. 25
- “(3) Despite **subsection (2)**, a written caution must not be served—
- “(a) on anyone if the court is satisfied that the motor vehicle— 30
- “(i) was stolen or converted at the material time; or
- “(ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998: 35
- “(b) on a person who the court is satisfied—
- “(i) did not own or have an interest in the motor vehicle at the material time; or

- “(ii) is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender.
 - “(4) On any 1 occasion, no more than 1 written caution is to be served on each recipient described in **subsection (2)**, regardless of the number of convictions entered against the offender. 5
 - “(5) A written caution must provide the following information:
 - “(a) the name and identifying details of the offender:
 - “(b) the relevant convictions against the offender:
 - “(c) the identifying details of the motor vehicle: 10
 - “(d) that the recipient is believed to own or have an interest in the motor vehicle and that none of the exceptions stated in **subsection (3)** has been established to the satisfaction of the court:
 - “(e) a warning that if the offender is convicted of a further offence specified in section 128(1) that involves a motor vehicle owned by the recipient or in which the recipient has an interest, the motor vehicle is liable to be confiscated or confiscated and destroyed: 15
 - “(f) the recipient’s right to seek a review of the court’s decision to order the service of the written caution on the recipient. 20
 - “(6) The written caution remains current for 4 years after the date of the commission of the offence for which that written caution is served. 25
 - “(7) A written caution must be served personally by an employee or agent of the Ministry of Justice on every person ordered to be served.
 - “(8) An endorsement on a copy of a written caution stating the fact and the time of service and purporting to be signed by an employee or agent of the Ministry of Justice is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with **subsection (7)**. 30
- “**129C Review of written caution**
- “(1) A person served with a written caution may, within 20 working days after the date of service, apply to the court that ordered 35

the service of the written caution for a review of the decision to serve the applicant on 1 or more of the following grounds:

“(a) the motor vehicle was stolen or converted at the material time:

“(b) the person did not own or have an interest in the motor vehicle at the material time: 5

“(c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender:

“(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998. 10

“(2) Every application must include a statutory declaration that specifies a ground stated in **subsection (1)** and why that ground applies. 15

“(3) The Registrar must promptly forward a copy of the application to the prosecuting agency in the proceeding that resulted in the relevant conviction.

“(4) The prosecuting agency may, within 10 working days after the day on which the copy of the application is forwarded to the agency, make a written submission to the court. 20

“(5) The court must conduct the review on the papers, unless the court considers a hearing necessary.

“(6) If satisfied that a ground stated in **subsection (1)** applies, the court must cancel the written caution so far as it applies to the applicant and in that case the written caution is deemed not to have been served on the applicant. 25

“129D Written caution of no effect if conviction quashed

“(1) If all of the convictions in respect of which a written caution has been served on a person are quashed, and no convictions for offences qualifying for confiscation under section 128, 129, or **129A** are substituted, the written caution ceases to have effect and is deemed not to have been served. 30

“(2) If a written caution ceases to have effect under **subsection (1)**, the Registrar must, by ordinary post, advise every person served with the written caution of that outcome. 35

“129E Appeal against confiscation by persons treated as substitutes

- “(1) If the court orders, under section 128 or **129A**, the confiscation of a motor vehicle on the basis that the person who owns it, or has an interest in it, is a substitute for the offender, that person may, within 20 working days after the date of the order, appeal to the appropriate court against the order on 1 or more of the following grounds:
- “(a) the person did not own or have an interest in the motor vehicle at the material time: 10
 - “(b) the motor vehicle was stolen or converted at the material time:
 - “(c) the person did not know, and could not reasonably have known, that the offender would commit the offence or offences: 15
 - “(d) the person took all reasonable steps to prevent the offender from committing the offence or offences:
 - “(e) the person had not, prior to the commission of the offence, been served with a written caution under **section 129B** in relation to the offender: 20
 - “(f) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender:
 - “(g) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998. 25
- “(2) The prosecuting agency in the proceeding that resulted in the relevant conviction is a party to the appeal and the person must serve the notice of appeal on that prosecutor.
- “(3) The right of appeal under **subsection (1)** is independent of the offender’s right of appeal against conviction and sentence for the relevant offence or offences. 30
- “(4) The court must set aside the confiscation of the motor vehicle if satisfied that 1 or more of the grounds stated in **subsection (1)** apply to the person and, where any other persons treated as substitutes own or have an interest in the motor vehicle, also apply to each of those other persons. 35
- “(5) For the purposes of **subsection (1)**,—

- “(a) if the order was made in a District Court, the appeal must be brought in the High Court in accordance with the High Court Rules:
- “(b) if the order was made in the High Court, the appeal must be brought in the Court of Appeal in accordance with the rules of court governing civil appeals to that court.”

9 Court may order declaration of ownership to be completed

- (1) Section 130(1) is amended by omitting “section 128 or section 129” and substituting “section 128, 129, or **129A**”.
- (2) Section 130(2)(b) is amended by inserting “(including any encumbrance)” after “any interest”.

10 New section 130A inserted

The following section is inserted after section 130:

“130A Court may disregard disposal of motor vehicle by person after written caution

- “(1) This section applies if—
- “(a) a person has been served with a written caution under **section 129B** in respect of an offender; and
- “(b) after being served with the written caution, the person purports to dispose of his or her ownership interest or other interest in the motor vehicle described in the written caution; and
- “(c) following that disposition, the offender is convicted of a further offence specified in section 128(1) involving that motor vehicle; and
- “(d) it appears to the court that the offender does not own or have an interest in the motor vehicle.
- “(2) If the circumstances of the further offence described in **subsection (1)(c)** would, but for that disposition, enable the court to order the confiscation of the motor vehicle under section 128 or **129A** on the basis that the person is a substitute for the offender, and the court is not satisfied that the disposition was made with a bona fide intention to dispose permanently of the person’s ownership or interest in the motor vehicle,—
- “(a) the court may, if it thinks fit, set the disposition aside; and

- “(b) section 128 or **129A**, as the case may be, applies as if the disposition by the person had not occurred.
- “(3) Before making an order under **subsection (2)**, the court must give any person to whom the disposition of the motor vehicle was made an opportunity to be heard.” 5
- 11 If motor vehicle has been disposed of, court may prohibit offender from acquiring another motor vehicle**
- (1) Section 131 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if, in any case to which any of section 128, 129, or **129A** would otherwise apply, the offender or any substitute for the offender has, before the date of the offender’s conviction, ceased to be the owner of the motor vehicle or to have any interest in it.” 10
- (2) Section 131(2)(b) is amended by inserting “or the substitute for the offender” after “if the offender”. 15
- (3) Section 131(3) is amended by inserting “or the substitute for the offender” after “made by the offender”.
- (4) Section 131(3) is amended by repealing paragraph (b) and substituting the following paragraph: 20
- “(b) section 128, 129, or **129A**, as the case may be, applies as if the disposition by the offender or by the substitute for the offender had not occurred.”
- 12 Enforcement of confiscation order**
- (1) Section 132 is amended by repealing subsection (1) and substituting the following subsection: 25
- “(1) If a court makes a confiscation order under any of sections 128, 129, and **129A**, it must specify in that order the time and place at which the offender or the substitute for the offender must surrender the motor vehicle to the Registrar or to a bailiff or constable.” 30
- (2) Section 132(2) is amended by inserting “or the substitute for the offender” after “the offender”.
- (3) Section 132(5)(a) is amended by inserting “or a substitute for an offender” after “an offender”. 35

13 Offender must not acquire new interest in motor vehicle for 12 months

(1) Section 136(1)(a) is amended by omitting “section 128 or section 129” and substituting “any of sections 128, 129, and **129A**”.

5

(2) Section 136 is amended by repealing subsections (4) and (5) and substituting the following subsections:

“(4) If a court convicts a person of an offence against this section, then instead of, or in addition to, imposing a fine, the court may order that the motor vehicle concerned be confiscated and, where this section applies because of an order under **section 129A**, may also order that the motor vehicle be destroyed.

10

“(5) If a court orders the confiscation, or the confiscation and destruction, of a motor vehicle under **subsection (4)**, sections 130, 131 to 135, this section, and sections **136A** to 142 apply accordingly.”

15

14 New section 136A inserted

The following section is inserted after section 136:

“**136A Registrar must seek deregistration of motor vehicle subject to confiscation and destruction order**

20

If, under **section 129A** or **136(4)**, the court orders a motor vehicle to be confiscated and destroyed, a Registrar must, before the motor vehicle is sold, seek to have the registration of the motor vehicle cancelled by complying, so far as practicable, with the obligations imposed on an owner by section 27(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.”

25

15 Sale of confiscated motor vehicles

(1) Section 137(1) is amended by omitting “court may direct” and substituting “Registrar, subject to any direction by the court, thinks fit”.

30

(2) Section 137 is amended by repealing subsection (3) and substituting the following subsections:

“(3) Subject to **subsection (4)**, the proceeds of the sale must be applied in the following manner and order of priority:

35

- “(a) if the motor vehicle has been impounded under the Land Transport Act 1998, in paying any impoundment costs:
 - “(b) in payment of the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale): 5
 - “(c) in satisfaction of any amount owed under any encumbrance brought to the notice of the Registrar within 1 month after the date of sale and established to the Registrar’s satisfaction: 10
 - “(d) in payment of any sum known by the Registrar to be payable by the offender in respect of any fine, or under any sentence or order of reparation, imposed on the offender, or in payment of any court costs ordered to be paid by the offender: 15
 - “(e) to the offender or, as the case requires, the substitute for the offender.
- “(4) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the offender or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in **subsection (3)**, except that the payment described in **paragraph (d)** of that subsection is limited to sums imposed in respect of offences committed by the offender in a motor vehicle that, at the material time, was owned by the substitute or in which the substitute had an interest.” 25

16 New sections 137A to 137C inserted

The following sections are inserted after section 137:

“137A Certain sales conditional on dismantling and destruction

- “(1) This section applies if any motor vehicle sold under section 137 is subject to a confiscation and destruction order under **section 129A** or **section 136(4)**. 30
- “(2) The sale of the motor vehicle is subject to a condition that the purchaser dismantle the motor vehicle for any saleable parts and destroy the remainder of the motor vehicle, to the satisfaction of the Registrar. 35
- “(3) The condition imposed by **subsection (2)** must be fulfilled within 30 working days after the date of the sale, or within any longer period that the Registrar specifies in writing.

“(4) The property in the motor vehicle does not pass from the Crown to the purchaser until the condition imposed by **subsection (2)** has been fulfilled.

“**137B Failure to comply with condition to dismantle and destroy**

5

“(1) Where the sale of a motor vehicle is subject to a condition imposed by **section 137A(2)** and that condition is not fulfilled within the appropriate time, the Registrar may require any person in possession of the motor vehicle to surrender it to the Registrar, or a bailiff or constable, at a specified time and place. 10

“(2) If the person in possession of the motor vehicle fails to surrender the motor vehicle at the time and place specified by the Registrar, the court may issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to recover the motor vehicle. 15

“(3) For the purpose of executing a warrant issued under **subsection (2)**, the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if that officer has reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises. 20

“(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person.

“(5) If a motor vehicle is surrendered to or recovered by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar of the court. 25

“(6) Sections 133 and 134 apply, with any necessary modifications, in respect of a motor vehicle surrendered or recovered under this section and to a warrant issued under this section. 30

“**137C Sale of motor vehicle surrendered or recovered under section 137B**

“(1) As soon as practicable after a motor vehicle is delivered into a Registrar’s custody under **section 137B**, the Registrar must arrange for the sale of the motor vehicle, and sections 137(1) 35

and (2), **137A**, and **137B** apply to that sale with any necessary modifications.

“(2) The proceeds of the sale must be applied in the following manner and order of priority:

“(a) in payment of the costs of the sale (including all costs incurred in recovering the motor vehicle, and towing and storing the vehicle):

“(b) in payment to the purchaser to whom the motor vehicle was sold under section 137.”

17 Disposal of unsaleable confiscated vehicle 10
 Section 138 is amended by inserting “or **137B**” after “section 132”.

18 New section 138A inserted
 The following section is inserted after section 138:

“**138A Offender liable for outstanding costs of seizure, storage, and sale** 15

“(1) If the amount realised from the sale of a motor vehicle under section 137 or its disposal under section 138 is less than the costs described in **subsection (2)**, the offender is liable for the shortfall between that amount and those costs. 20

“(2) The costs are,—
 “(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs; and
 “(b) the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale). 25

“(3) **Subsection (1)** applies regardless of whether the offender owned or had an interest in the motor vehicle.

“(4) Part 3 of the Summary Proceedings Act 1957 or (as the case may require) sections 19 to 19F of the Crimes Act 1961 apply with any necessary modifications to any amount the offender is liable to pay under **subsection (1)** as if it were a fine. 30

“(5) A certificate appearing to have been signed by the Registrar that, following the sale or disposal of a motor vehicle, the offender is liable to pay a sum under **subsection (1)** is, in the 35

absence of proof to the contrary, sufficient evidence of the facts certified, without proof of the signature or office of the person appearing to have signed the certificate.”

19 New section 140 substituted

Section 140 is repealed and the following section substituted: 5

“140 Lessor under leasing agreement may apply to Registrar

“(1) The lessor (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) under a leasing agreement of a confiscated motor vehicle (not being a motor vehicle that is to be destroyed under **section 129A** or **section 136(4)**) may apply to the Registrar, at any time before the Registrar has sold the motor vehicle, for the transfer of the motor vehicle to the lessor as if the offender or the substitute had breached the terms of the agreement. 10

“(2) If **subsection (1)** applies, the Registrar may transfer the motor vehicle to the lessor accordingly. 15

“(3) In the case of a motor vehicle that has been seized while impounded under the Land Transport Act 1998, the motor vehicle may not be transferred unless any impoundment costs are first paid into court.” 20

20 Party with interest may apply to court

(1) Section 141 is amended by repealing subsection (1) and substituting the following subsections:

“(1) Any party (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) to any encumbrance over a confiscated motor vehicle may apply to the court, at any time before the Registrar has sold the motor vehicle, for an order under subsection (2). 25

“(1A) **Subsection (1)** does not apply to an encumbrance that is a leasing agreement or to a motor vehicle that is to be destroyed under **section 129A** or **136(4)**.” 30

(2) Section 141(2) is amended by inserting “or the substitute for the offender, as the case may be,” after “the offender”.

(3) Section 141 is amended by inserting the following subsection after subsection (2): 35

“(2A) If a motor vehicle to be transferred under subsection (2) has been impounded under the Land Transport Act 1998, any impoundment costs must be paid before the motor vehicle is transferred.”

21 Order may be cancelled on application by bona fide purchaser 5

Section 142(1) is amended by inserting “(including a confiscation and destruction order under **section 129A** or **136(4)**)” after “confiscation order”.

22 Transitional provision 10

Section 129(6) to (8) and sections 129A and 129B of the principal Act, as inserted by **sections 7 and 8** of this Act, do not apply in respect of any offence (whether described in those sections as a first offence, second offence, current offence, previous offence, or in any other way) committed before the commencement of **sections 7 and 8**. 15

Part 2

Amendments to Summary Proceedings Act 1957

23 Principal Act amended 20

This **Part** amends the Summary Proceedings Act 1957.

24 Purpose

The purpose of this **Part** is to reduce traffic offending by strengthening the provisions that govern the seizure of motor vehicles to enforce the collection of unpaid fines and reparation. 25

25 New section 93A inserted

The following section is inserted after section 93:

“93A Seizure and disposal of motor vehicles: application of sections 100A to 100V instead of sections 94 to 100 30

Sections 94 to 100 do not apply to any property that is a motor vehicle; **sections 100A to 100V** apply instead.”

- 26 Seizure and delivery of property**
Section 94(3) is repealed.
- 27 Sections 94A and 94B repealed**
Sections 94A and 94B are repealed.
- 28 New heading and sections 100A to 100V inserted** 5
The following heading and sections are inserted after section 100:
“Seizure, release, and sale of motor vehicles
- “100A Interpretation**
- “(1) In this section and in **sections 100B to 100V**, unless the 10
context otherwise requires,—
“**encumbrance**, in relation to a motor vehicle, includes—
“(a) a hire purchase agreement:
“(b) a leasing agreement:
“(c) any other agreement entered into between the defendant 15
and another party under which the other party obtains or
retains any interest in the motor vehicle
- “**hire purchase agreement** means a hire purchase agreement
within the meaning of section YA 1 of the Income Tax Act
2007 20
- “**impoundment costs**, in relation to a motor vehicle that has
been seized while impounded under section 96 or 96A of
the Land Transport Act 1998, means the fees and charges
for towage and storage that are prescribed or assessed in the
manner specified by regulations made under section 167 of 25
that Act, and, where those fees and charges have already been
paid by the chief executive of the Ministry of Justice, means
the amount required to reimburse the chief executive for that
payment
- “**interest** means any proprietary interest, whether legal or eq- 30
uitable, and whether vested or contingent
- “**leasing agreement** does not include any agreement entered
into between the defendant and the holder of a rental service
licence under the Land Transport Act 1998
- “**registered owner** means the person registered under the 35
Transport (Vehicle and Driver Registration and Licensing)

Act 1986 as the owner of the motor vehicle, and where several persons are so registered, means any one of those persons

“**traffic offence** means—

“(a) any offence against the Transport Act 1962, the Road User Charges Act 1977, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, or the Land Transport Act 1998, or against any regulation or bylaw made under any of those Acts: 5

“(b) any offence against any regulation or bylaw made under any other Act if the offence relates to the use of motor vehicles or parking places or transport stations 10

“**use**, in relation to a motor vehicle, means driving, or being in charge of, the motor vehicle

“**written caution** means a caution issued under **section 100B**. 15

“(2) For the purposes of **sections 100B to 100V**, a person is, in relation to a defendant, a **substitute for the defendant** or a **substitute** if—

“(a) the person is served with a written caution, under **section 100B**, about a traffic offence committed by the defendant; and 20

“(b) within 4 years after the date of the commission of the offence for which that written caution was served, the defendant commits a further traffic offence involving a motor vehicle that, at the time of the commission of that offence, the person owns or has an interest in. 25

“(3) For the purposes of **sections 100B to 100V**, a motor vehicle is owned by a person whether the person owns it solely or as a joint tenant or tenant in common with any other person.

“(4) For the purposes of the exercise of any power, or the performance of any duty or function, under this Part, the registered owner of a motor vehicle is taken to be the owner of the motor vehicle unless the person exercising the power or performing the duty or function is satisfied that the registered owner of the motor vehicle is not the owner of the motor vehicle. 30 35

“(5) A reference in **sections 100B to 100V** to a person holding a motor vehicle as nominee for a defendant or for a substitute for the defendant is a reference to a person who purports to be

the owner or who is the registered owner of the motor vehicle but whose purported ownership or registration is subject to an understanding or arrangement that the person—

“(a) is not to acquire any rights, or only limited rights, in the motor vehicle; and 5

“(b) will, in relation to the motor vehicle, act on behalf of the defendant or the substitute for the defendant.

“100B Written caution to person holding interest in motor vehicle

“(1) If a defendant defaults in paying any fine for a traffic offence committed while using a motor vehicle in which the defendant does not appear to have an interest, the Registrar may issue a written caution to any other person who appears to own or to have an interest in the motor vehicle. 10

“(2) Despite **subsection (1)**, a written caution is not to be issued— 15

“(a) if the Registrar is satisfied that the motor vehicle—

“(i) was stolen or converted at the material time; or

“(ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998: 20

“(b) to a person who the Registrar is satisfied is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the offender.

“(3) The written caution must state that any motor vehicle in which the other person has an interest is liable to be seized if the defendant defaults in paying a fine for any further traffic offence committed— 25

“(a) while using a motor vehicle in which the person has an interest as owner or otherwise; and

“(b) within 4 years after the date on which the written caution is served on the person. 30

“(4) A written caution must provide the following information:

“(a) the name and identifying details of the defendant:

“(b) the relevant traffic fine that the defendant has defaulted in paying: 35

“(c) the identifying details of the motor vehicle in which the traffic offence or traffic offences were committed:

- “(d) that the recipient is believed to own or have an interest in the motor vehicle and that none of the reasons stated in **subsection (2)** for not issuing the written caution to the recipient has been established to the satisfaction of the Registrar: 5
- “(e) the recipient’s right to seek a review of the Registrar’s decision to order the issue of the written caution on the recipient.
- “(5) The written caution must be served personally on the other person by an employee or agent of the Ministry of Justice. 10
- “(6) An endorsement on a copy of a written caution stating the fact and the time of service and purporting to be signed by an employee or agent of the Ministry of Justice is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with **subsection (5)**. 15
- “100C Review of written caution**
- “(1) A person served with a written caution under **section 100B** may, within 20 working days after the date of service, apply to the Registrar who issued the written caution for a review by a District Court Judge of the decision to serve the person, on 1 20 or more of the following grounds:
- “(a) the motor vehicle was stolen or converted at the material time:
- “(b) the person did not own or have an interest in the motor vehicle at the material time: 25
- “(c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:
- “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land 30 Transport Act 1998.
- “(2) Every application must include a statutory declaration that specifies a ground stated in **subsection (1)** and why that ground applies.
- “(3) The Judge must conduct the review on the papers unless the 35 Judge considers that a hearing is necessary.

“(4) If satisfied that 1 or more of the grounds stated in **subsection (1)** apply, the Judge must cancel the written caution so far as it applies to the applicant, and in that case the written caution is deemed not to have been served on the applicant.

“**100D Written caution of no effect if fine quashed or set aside** 5

“(1) If the fine in respect of which a written caution has been served on a person is quashed or set aside, the written caution ceases to have effect and is deemed not to have been served.

“(2) If a written caution ceases to have effect under **subsection (1)**, the Registrar must send, by ordinary post, a notice advising every person served with the written caution of that outcome. 10

“**100E Seizure of motor vehicles**

“(1) In addition to the matters provided for by section 93(1), a warrant to seize property issued under section 83(2)(a), 87(1)(a), or 88(3)(a) also authorises the seizure of any motor vehicle in which the defendant or a substitute for the defendant has an ownership interest or other interest. 15

“(2) For the purpose of executing any warrant to seize property, the bailiff or constable executing it may enter on any premises, by force if necessary, if that bailiff or constable has reasonable cause to believe that a motor vehicle is on the premises, being a motor vehicle that the defendant or a substitute for the defendant owns or has an interest in. 20

“(3) If any person is in actual occupation of the premises, the bailiff or constable must, on entering, produce the warrant to that person. 25

“(4) Where the fine is paid on the production of a warrant to seize property, the payment must be recorded on the warrant and the warrant is then of no further effect. 30

“(5) Without limiting anything in **section 100I**, any bailiff or constable seizing a motor vehicle under a warrant to seize property may in the first place immobilise the vehicle by attaching to the vehicle any device designed for that purpose.

- “(6) When a motor vehicle is seized, under a warrant to seize property, the bailiff or constable must forthwith give the defendant or the substitute a notice in the prescribed form—
- “(a) identifying the motor vehicle seized; and
 - “(b) directing the defendant or the substitute for the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the defendant or the substitute owns or has an interest in the motor vehicle and the name and address of any other person who owns or has an interest (including any encumbrance) in the motor vehicle.
- “(7) The notice required to be given by **subsection (6)** must be delivered to the defendant or the substitute, or left for the defendant or the substitute in a conspicuous place at the premises from which the motor vehicle is seized, or sent to the defendant or the substitute by ordinary post, fax, email, or other electronic means.

“**100F Seizure of motor vehicles impounded under Land Transport Act 1998**

- “(1) Any motor vehicle in which the defendant or a substitute for the defendant has an ownership interest or other interest may be seized under a warrant to seize property even if it is impounded under section 96 or 96A of the Land Transport Act 1998, as long as it has been impounded under that Act for at least 14 days.
- “(2) The power to seize a motor vehicle described in **subsection (1)** is not limited by any appeal pending under section 102 or 110 of the Land Transport Act 1998.

“**100G Purposes of seizure**

- “(1) A motor vehicle may be seized under this Part for the purpose of reducing opportunities for traffic offending, as well as for the purpose of recovering the fine that is in default.
- “(2) A motor vehicle may be seized under this Part even though the value of the vehicle, or the value of the interest that the defendant or any substitute for the defendant has in the vehicle, is likely to be less than the amount of the fine in default.

“100H Seized motor vehicle to be retained by or for Registrar

“(1) The bailiff or constable executing a warrant to seize property must ensure that a motor vehicle seized under the warrant is—

“(a) taken to the Registrar; or

“(b) if the Registrar so directs, taken to, or retained by, any person or at any place specified for the purpose by the Registrar. 5

“(2) If any motor vehicle that is seized under a warrant to seize property fails to comply in any respect with section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the vehicle may, despite that Act or any other enactment, be towed to any place specified by the Registrar. 10

“(3) The Registrar must ensure the seized motor vehicle is retained until the motor vehicle is sold or released in accordance with a determination of the Registrar or a District Court Judge. 15

“100I Immobilisation of motor vehicles

“(1) Any bailiff or constable executing a warrant to seize property may, instead of seizing any motor vehicle, immobilise the vehicle by attaching to the vehicle any device designed for the purpose, pending the payment of the fine in default. 20

“(2) No motor vehicle may be immobilised under **subsection (1)** unless, at the time of its immobilisation, it is—

“(a) on private property; or

“(b) in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons. 25

“(3) Where any motor vehicle is immobilised under **subsection (1)**, any bailiff or constable—

“(a) may at any time seize the vehicle:

“(b) must, on the direction of a Registrar, seize the vehicle. 30

“(4) When the motor vehicle is seized under **subsection (3)**, **subsection 100H** applies accordingly.

“(5) If, 14 days after the date of the immobilisation of any motor vehicle under **subsection (1)**, the fine remains unpaid, the Registrar must direct a bailiff or constable to seize the vehicle. 35

- “(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
 - “(a) tampers with, removes, or attempts to remove a device attached to a motor vehicle under **subsection (1)**; or 5
 - “(b) removes, or attempts to remove,—
 - “(i) a motor vehicle to which a device is, or has been, attached; or
 - “(ii) any part of that vehicle; or
 - “(iii) any other property from that vehicle. 10

“100J Personal property securities register to be checked

- “(1) If a motor vehicle is seized under a warrant to seize property, the Registrar must, on the next working day after the vehicle is seized, check whether a financing statement has been registered in respect of the vehicle on the personal property securities register kept under the Personal Property Securities Act 1999. 15
- “(2) If a financing statement has been registered, the Registrar must forthwith notify the person named as the secured party in the financing statement of the following: 20
 - “(a) that the Registrar may, under **section 100L**, sell the motor vehicle after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made in respect of the vehicle by a person other than— 25
 - “(i) the defendant; or
 - “(ii) a substitute for the defendant; or
 - “(iii) a nominee for the defendant or the substitute:
 - “(b) of the rights that may be available to the person under **sections 100M, 100S, and 100T**. 30

“100K Release of vehicles if fine and other costs paid or if certain appeals successful

- “(1) If no claims under any of **sections 100P, 100S, and 100T** are pending in respect of a motor vehicle that has been seized and is retained by the Registrar, the motor vehicle may be returned to the person from whom it was seized or to the person apparently lawfully entitled to it if the following are paid: 35

- “(a) the fine:
- “(b) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, any impoundment costs:
- “(c) all costs incurred in seizing, towing, and storing the motor vehicle. 5
- “(2) If the motor vehicle has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released under **subsection (1)** before the day after the close of the 28-day period for which the vehicle would otherwise be required to be impounded under that Act. 10
- “(3) **Subsection (2)** is subject to **section 100T(1)(a) and (3)**.
- “(4) Despite **subsection (1), section 100L, and sections 100P to 100T**, if an appeal, under section 102 or 110 of the Land Transport Act 1998, against the impoundment of the motor vehicle is allowed before the expiry of the 28-day period for which the vehicle would otherwise be required to be impounded under section 96 or 96A of the Land Transport Act 1998, the Registrar must release the vehicle to the registered owner of the vehicle. 15 20
- “(5) **Subsection (4)** does not apply if the motor vehicle has already been released to a lessor or creditor under **section 100S or 100T(1)(a)** or been sold under **section 100T(1)(b)**.
- “100L Sale of motor vehicle seized**
- “(1) If any fine remains unpaid, any motor vehicle seized under a warrant to seize property may, after the expiry of the relevant period specified in **subsection (2)**, be sold at public auction or in any other manner directed by a District Court Judge or the Registrar, and the purchaser of the motor vehicle so sold obtains, by virtue of this section, good title to the motor vehicle despite the interests of the owner or any other person in the motor vehicle before the sale. 25 30
- “(2) The relevant period referred to in **subsection (1)** is 7 days after the day on which the motor vehicle was seized or, if the motor vehicle was seized while impounded under section 96 or 96A of the Land Transport Act 1998, the later of— 35

- “(a) the day after the close of the 28-day period for which the motor vehicle would otherwise be required to be impounded under that Act; or
 - “(b) the expiry of 8 days after the day on which the motor vehicle was seized. 5
- “(3) A motor vehicle may be sold under this section even though it fails to comply in any respect with section 5 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, and the purchaser of that motor vehicle—
 - “(a) is, despite that Act or any other enactment, entitled to tow the motor vehicle to any appropriate place; and 10
 - “(b) must comply in all respects with that Act as soon as the motor vehicle has been towed to that place.
- “(4) If the Registrar considers that a motor vehicle is not roadworthy and that it would be uneconomic to render it roadworthy, the Registrar must, before the motor vehicle is sold under this section, seek to have the registration of the motor vehicle cancelled by complying, so far as practicable, with the obligations imposed on an owner by section 27(1) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986. 15 20
- “(5) The sale of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 is not affected by any appeal that is pending after the 28-day period for which the motor vehicle would otherwise be required to be impounded under that Act or by any appeal that is determined after that period. 25
- “(6) If, in respect of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, any impoundment costs remain outstanding on the 38th day after the day on which the motor vehicle was impounded, the Registrar may, whether or not the fine has been paid, order that the motor vehicle be sold. 30
- “(7) The sale of a motor vehicle by the Registrar is deferred by a pending claim in respect of the motor vehicle only if the costs of storage have been paid under **section 100M** or a deposit has been paid, or security has been provided, under **section 100P**. 35

“100M Registrar must defer sale if storage costs paid

The defendant or a claimant to the motor vehicle may pay into court the costs incurred by the court in storing the motor vehicle for at least 8 days and as long as those costs, and any recurring storage costs, are paid, the Registrar must defer the sale of the motor vehicle. 5

“100N Application of proceeds of sale

- “(1) When a motor vehicle is sold under **section 100L**, the proceeds of the sale must be applied in the following manner and order of priority: 10
- “(a) if the motor vehicle has been impounded under section 96 or 96A of the Land Transport Act 1998, in payment of any impoundment costs:
 - “(b) in payment of the costs of the sale (including all costs incurred in seizing, towing, and storing the motor vehicle, and complying with the provisions of this Part preliminary to sale): 15
 - “(c) in satisfaction of any amount owed under any encumbrance established to the satisfaction of the Registrar or a District Court Judge: 20
 - “(d) in payment of any sentence or order of reparation imposed on the defendant:
 - “(e) in payment of the fine specified in the warrant:
 - “(f) to the defendant or, as the case requires, to the substitute for the defendant. 25
- “(2) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the defendant or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in **subsection (1)**, except that the payments described in **paragraph (d)** or **(e)** of that subsection are limited to sums imposed in respect of offences committed by the defendant in a motor vehicle that, at the material time, was owned by the substitute or in which the substitute had an interest. 30
- “(3) The Judge may, on application or on his or her own initiative, give any directions as to the application of the proceeds of sale under this section. 35

“100O Remission of fine and costs of sale in certain cases

- “(1) This section applies where a sale of a motor vehicle under **section 100L** (other than a sale ordered under **section 100T(1)(b)**) does not result in a reduction of the defendant’s fine by more than \$100. 5
- “(2) If this section applies, the Registrar—
 - “(a) must remit the costs of the sale of the motor vehicle, as described in **section 100N(1)(a) and (b)**; and
 - “(b) must remit—
 - “(i) the entire fine in default, in any case where the amount of that fine is \$100 or smaller; 10
 - “(ii) \$100 less any proceeds of that sale that have been applied towards paying the fine, in any case where the fine in default is greater than \$100.
- “(3) The reference to **fine** in **subsection (2)(b)** does not include 15
any reparation that the defendant is liable to pay.

“100P Release of motor vehicle to certain owners

- “(1) If satisfied that the defendant does not own the seized motor vehicle, the Registrar or a District Court Judge must release the motor vehicle to a person who satisfies the Registrar or the Judge that the person— 20
 - “(a) is the owner of the motor vehicle; and
 - “(b) is not a substitute for the defendant; and
 - “(c) is not a nominee for the defendant or the substitute.
- “(2) If a person other than the defendant claims to own the motor vehicle and the Registrar is not satisfied of the matters specified in **subsection (1)**, the Registrar must issue a summons calling before the court the claimant and the defendant, and, in that event, any action brought in respect of the claim is stayed. 25
- “(3) Where a summons has been, or is to be, issued under **subsection (2)**, the Registrar may release the motor vehicle to the defendant or to the substitute for the defendant if a deposit is paid or security is provided for whichever is the lesser of— 30
 - “(a) the value of the seized motor vehicle; or
 - “(b) the fine in default, including the seizure costs, the costs of storage, and any impoundment costs. 35

- “(4) If, on the determination of the claim, the claim is dismissed, the amount of the deposit or the amount obtained from the security may be applied as if it were the proceeds of the sale of the motor vehicle.
- “(5) If the motor vehicle was seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released under this section unless any impoundment costs are first paid into court and the 28-day impoundment period has expired. 5
- “**100Q Appeal against seizure by persons treated as substitutes** 10
If a motor vehicle is seized on the basis that the person who owns it, or has an interest in it, is a substitute for the defendant, that person may, within 7 days after the date of the seizure, appeal against the seizure on 1 or more of the following grounds:
- “(a) the person did not own or have an interest in the motor vehicle at the material time: 15
- “(b) the motor vehicle was stolen or converted at the material time:
- “(c) the person took all reasonable steps to prevent the defendant from committing the offence or offences: 20
- “(d) the person had not, prior to the commission of the offence, been served with a written caution under **section 100B** in relation to the defendant:
- “(e) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant: 25
- “(f) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.
- “**100R Determination of claim by owners** 30
- “(1) In determining a claim under **section 100P(3)**, a District Court Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to the claimant if satisfied that—
- “(a) the defendant does not have an interest in the motor vehicle; and 35
- “(b) the claimant is not a substitute for the defendant; and

- “(c) the claimant owns the motor vehicle neither as nominee for the defendant nor for the substitute.
- “(2) The Judge may, if the motor vehicle has not yet been sold, release the motor vehicle to a person whose motor vehicle was seized because the person was taken to be a substitute for the defendant if satisfied that 1 or more of the following grounds apply:
 - “(a) the person did not own or have an interest in the motor vehicle at the material time:
 - “(b) the motor vehicle was stolen or converted at the material time:
 - “(c) the person is a party to an encumbrance relating to the motor vehicle but has no relationship of another kind with the defendant:
 - “(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.
- “(3) The Judge may ask any claimant to satisfy the Judge that any agreement, transfer, or change in registration or ownership is genuine if the Judge has reason to question whether the claimant is a nominee for the defendant or any substitute for the defendant.
- “(4) A person who claims to have acquired a motor vehicle from the defendant after the commission of any offence or after the taking of any enforcement action against the defendant must satisfy the Judge that the transaction on which the acquisition was based was genuine.
- “(5) In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released unless any impoundment costs are first paid into court and the 28-day impoundment period has expired.
- “(6) If the claimant succeeds in the claim to the motor vehicle,—
 - “(a) any deposit paid or security provided by the claimant must be returned to the claimant; and
 - “(b) a District Court Judge may order the defendant to reimburse the claimant for any costs the claimant has paid into court under **section 100M**.

“100S Lessor under leasing agreement may apply to Registrar

- “(1) The lessor (not being the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) under a leasing agreement of a seized motor vehicle may apply to the court, at any time before the Registrar has sold the motor vehicle, for the release of the motor vehicle to the lessor as if the defendant or the substitute for the defendant or the nominee for the defendant or the substitute had breached the terms of the agreement. 5
- “(2) If **subsection (1)** applies, the Registrar or a District Court Judge may release the motor vehicle to the lessor. 10
- “(3) The Registrar or a Judge may order the lessor to pay the costs incurred in seizing, towing, and storing the motor vehicle.
- “(4) In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 1998, the motor vehicle may not be released unless any impoundment costs are first paid into court. 15
- “(5) A motor vehicle may also be released under **subsection (2)** if it has been seized while impounded under section 96 or 96A of the Land Transport Act 1998 even though the 28-day period of impoundment for which the motor vehicle would otherwise be required to be impounded under that Act has not yet expired. 20

“Compare: 2002 No 9 s 140

“100T Claims by creditors

- “(1) Where, on an application or on his or her own initiative, the Registrar or a District Court Judge is satisfied that a person (not being the defendant or a substitute for the defendant) is a creditor under an encumbrance (other than a leasing agreement) over the seized motor vehicle, the Registrar or Judge may, if the motor vehicle has not yet been sold,— 25
- “(a) release the motor vehicle to the creditor and direct the creditor to sell the motor vehicle and account for the proceeds of sale in accordance with **subsection (6)**; or 30
- “(b) order the sale of the motor vehicle under **section 100L**.
- “(2) In the case of a motor vehicle that has been seized while impounded under section 96 or 96A of the Land Transport Act 35

1998, the motor vehicle may not be released unless any impoundment costs are first paid into court.

- “(3) A motor vehicle may also be released under **subsection (1)(a)** if it has been seized while impounded under section 96 or 96A of the Land Transport Act even though the 28-day period of impoundment for which the motor vehicle would otherwise be required to be impounded under that Act has not yet expired. 5
 - “(4) The Registrar or a Judge may order the creditor to pay the costs incurred in seizing, towing, and storing the motor vehicle. 10
 - “(5) A purchaser of a motor vehicle that is sold to the purchaser in compliance with a direction under **subsection (1)(a)** obtains, by virtue of this section, good title to the motor vehicle despite the interests of the owner or any other person in the motor vehicle before the sale. 15
 - “(6) The creditor—
 - “(a) must account to the Registrar for the proceeds of the sale of the motor vehicle; and
 - “(b) may retain out of those proceeds the actual and reasonable costs of the sale and any amount owed to the creditor under the encumbrance concerned; and 20
 - “(c) must pay into court any balance of those proceeds.
 - “(7) The Registrar must apply that balance in accordance with **section 100N**, with all necessary modifications.
- “**100U Failure by creditor to sell or account for proceeds** 25
- “(1) If the creditor fails to comply with a direction under **section 100T(1)(a)**, the Registrar must issue, in the prescribed form, a warrant to recover property and the motor vehicle may be recovered under that warrant as property of the defendant or the substitute for the defendant, and **section 100E** applies in respect of the motor vehicle with all necessary modifications. 30
 - “(2) As soon as practicable after a motor vehicle is delivered into a Registrar’s custody under **subsection (1)**, the Registrar must arrange for the sale of the motor vehicle and apply the proceeds of sale in accordance with **section 100N(1)**. 35
 - “(3) A creditor who fails, in whole or in part, to pay into court the money required under **section 100T(6)(c)** is liable to the

Crown for any amount not paid, and that amount may be recovered from the creditor as a debt due to the Crown.

“100V Compensation to person with interest in motor vehicle sold

- “(1) This section applies if— 5
- “(a) a person (other than the defendant or a substitute for the defendant or a nominee for the defendant or the substitute) suffers loss through the sale under **section 100L** of a motor vehicle in which the person had an interest; and 10
- “(b) the defendant or the substitute had not before the sale notified the Registrar of the person’s interest in the property.
- “(2) If this section applies, a Judge may, on the application of that person, order the defendant to pay to the person compensation 15 in respect of the loss.
- “(3) **Subsection (1)** does not limit or affect any other remedy that a person may have in respect of loss referred to in that subsection.”

Part 3 20

Amendment to Privacy Act 1993

29 Principal Act amended

This Part amends the Privacy Act 1993.

30 Schedule 5 amended

Schedule 5 is amended in the manner set out in the Schedule 25 of this Act.

Schedule**s 30****Schedule 5 amended**

Insert after the item relating to Vehicles of interest under the heading *Police Records*:

Vehicles impounded under Land Transport Act 1998	Particulars of an impounded vehicle, including type, model, and identifier on the registration plates; the section of the Land Transport Act 1998 under which it is impounded, the date on which it was impounded, and the place where it is impounded; the full name, full address, telephone number, occupation, driver licence number, and date of birth of every registered owner of the vehicle and of any person, other than a registered owner, who was driving the vehicle immediately before its impoundment	Ministry of Justice (access is limited to giving effect to action taken, under Part 3 of the Summary Proceedings Act 1957, to enforce the payment of fines, reparation, and related payments)
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