

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

Purpose of Document	
Decision sought:	This RIS provides advice to Cabinet on potential options to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers.
Advising agencies:	Ministry of Transport, New Zealand Police, and Ministry of Justice
Proposing Ministers:	Minister of Transport and Minister of Police
Date finalised:	11 October 2022
Problem Definition	
<p>Over the last decade, fleeing driver events have been steadily increasing in New Zealand. This is having road safety impacts, as these events pose serious safety risks to other road users.</p> <p>However, New Zealand Police (Police) is facing challenges identifying and apprehending fleeing drivers under current legislative and policy settings. This is preventing them from holding offenders to account and is undermining the land transport regulatory system.</p>	
Executive Summary	
<p>Cabinet invited the Minister of Police, in consultation with the Minister of Justice and Minister of Transport, to report back in October 2022 on proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers [CAB-22-MIN-0264 refers].</p> <p>This Regulatory Impact Statement (RIS) outlines potential legislative options for amending the <i>Land Transport Act 1998</i> (LTA) to:</p> <ul style="list-style-type: none"><li>• penalise fleeing drivers; and</li><li>• identify fleeing drivers.</li></ul> <p>If progressed, these proposals could be in place in 2023 to align with the introduction of legislative changes to expand the impoundment regime, proposed in the Criminal Activity Intervention Legislation Bill.</p>	
<b>Why are amendments needed?</b>	
<p>Over the last decade, fleeing driver events have been steadily increasing in New Zealand. This is having road safety impacts, as these events pose serious safety risks to other road users.</p> <p>Police revised its pursuit policy in 2020, to place emphasis on post-event investigations rather than commencing or continuing a pursuit. While this change has had significant safety gains (which are critical to maintain), it means post-event investigations are essential for identifying drivers so they can be held to account.</p> <p>Police, however, is facing challenges identifying and apprehending fleeing drivers under current legislative and policy settings, when the registered person of a vehicle does not cooperate with Police.</p>	

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

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

### **Options considered**

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

These options will be considered against the status quo.

#### *Focus Area 1: Increasing penalties for fleeing drivers*

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

#### *Focus Area 2: Identifying fleeing drivers*

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

### **Preferred option**

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

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

### **Potential impact of options chosen to progress**

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

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

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

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

### **Stakeholders' views**

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

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

### Public perceptions of Police pursuits of fleeing drivers

Based on EBPC-commissioned<sup>2</sup> research, members of the public, including those involved in fleeing driver events, have expressed a belief that if Police do not pursue, there would be less harm. However, most considered that not pursuing altogether would be problematic as it could result in reputational risk for Police. In particular, loss of respect and the perception that Police is not “doing their job”. There was also the view expressed that not pursuing could provide less of a deterrent for offending and as result lead to an increase in crime. These perceptions indicate the challenge for Police in balancing road safety outcomes with holding fleeing drivers to account.

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

<sup>2</sup> Ibid.

## Public perceptions of fleeing driver offences and penalties

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

### **Agency Feedback**

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

## **Limitations and Constraints on Analysis**

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

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

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

### **Data**

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

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

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

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

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

### Consultation

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

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

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

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

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

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

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

**Responsible Manager**

*Megan Moffet*  
*Manager*  
*Regulatory Policy*  
*Te Manatū Waka Ministry of Transport*



19 October 2022

**Quality Assurance (completed by QA panel)**

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

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# Section 1: Diagnosing the policy problem

## What is the context behind the policy problem?

### Fleeing driver events cause road safety harms

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

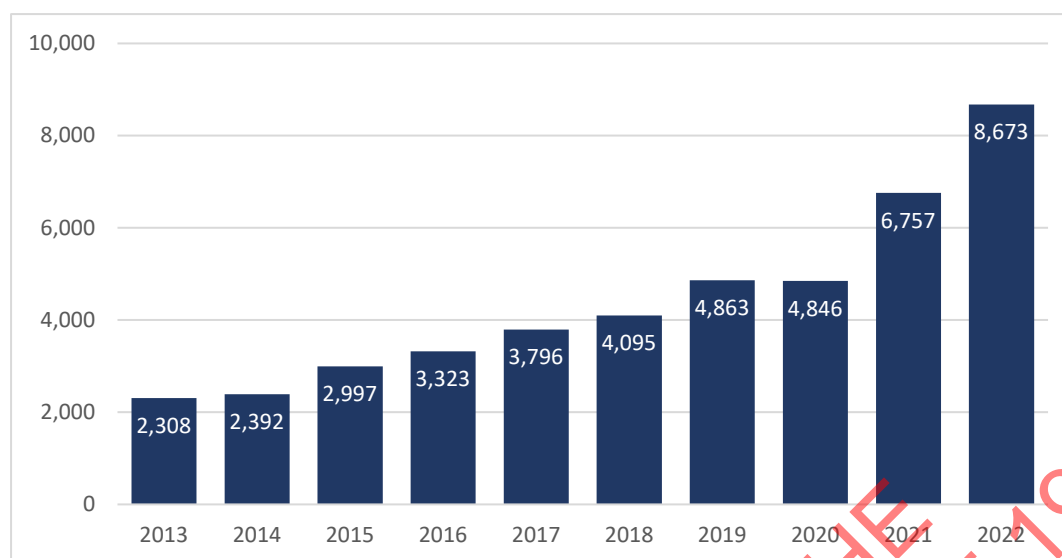
Table 1: Harm caused by fleeing driver incidents 2015 - 2021

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

### Fleeing driver events are increasing

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

Table 2: Fleeing driver notifications 2013 – August 2022



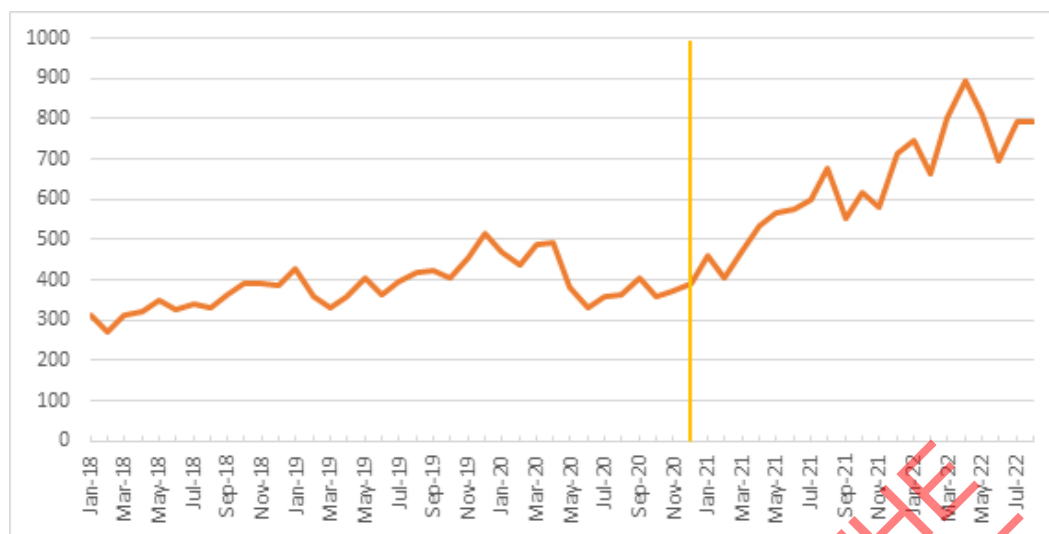
7. In December 2020, Police implemented a revised fleeing driver pursuit policy. Police now place emphasis on post-event investigations rather than commencing or continuing a pursuit. This followed the joint Police and Independent Police Conduct Authority (IPCA) collaborative review in 2019 that recommended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

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

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



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



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

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

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

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

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

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

<sup>8</sup> Ibid.

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

### Current penalties for failing to stop and remain stopped

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

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

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

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

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

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

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

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

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

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

#### *Young fleeing drivers*

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

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

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

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

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

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

### **Fleeing driver profiles**

30. The profile of a fleeing driver, including age, differs depending on circumstances and whether the driver is a first time or repeat offender.<sup>13</sup>
31. However, New Zealand research<sup>14</sup> does show that fleeing drivers are more likely to be younger and male, identify as Māori, have criminal and traffic offence histories, and not have a current driver licence, or be disqualified or suspended from driving.
32. 85% of offenders charged with failing to stop were first time offenders. 3.6% were charged for a second offence, and 10.4% for a third or subsequent offence.

### *Motivation for fleeing*

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

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

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

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

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

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

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

Table 5: profile of fleeing drivers<sup>19</sup>

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

### The use of penalties in the land transport system

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

#### *Penalties can lead to unfair outcomes...*

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

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

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

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

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

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

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

**How is the status quo expected to develop?**

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

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

<sup>22</sup> Section 226 of the Crimes Act 1961 – Conversion of vehicle or other conveyance.

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

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



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

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

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

#### *Road Safety Penalties Review and Safety Cameras*

s 9(2)(f)(iv)

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

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

#### *Towage and Storage Review*

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

#### *Other work*

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

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

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



## What is the policy problem?

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

## Te Tiriti o Waitangi implications

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

## Population group implications

62. New Zealand research<sup>29</sup> shows that fleeing drivers are more likely to be younger and male, identify as Māori, have criminal and traffic offence histories, and not have a current driver licence, or be disqualified or suspended from driving. This means any proposed changes will have the biggest impact on these population groups.
63. The removal of vehicles, whether it be through impoundment, confiscation or forfeiture will have a greater impact on people without access to other transport options, and lower socio-economic groups, who may need their vehicle to access key amenities, including employment, the supermarket, healthcare, and other services.

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

<sup>26</sup> New Zealand Institute for Economic Research (NZIER). The driver licensing challenge: NZIER report to the Ministry of Business, Innovation and Employment (2016), (Wellington, New Zealand: NZIER, April 2016), 6-8

<sup>27</sup> Ibid.

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

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

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

### What objectives are sought in relation to the policy problem?

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

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

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

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

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

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

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

## What scope will options be considered within?

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

## What options are being considered?

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

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

## Increasing penalties for fleeing drivers

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

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

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

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

### Option - Status Quo

#### *Description:*

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

#### *Analysis:*

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

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

#### *Description:*

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

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

*Analysis:*

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

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

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

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

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

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

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

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

*This option will have equity implications...*

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

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

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

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



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

### *Description:*

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

### *Analysis:*

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

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

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



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

**Option 1C: Enabling temporary removal of vehicles for failing to stop (six-months impoundment pre-conviction)**

*Description:*

112. This option would create a new discretionary power to enable Police to seize and impound vehicles involved in a fleeing driver event for six months. Currently, Police can only seize and impound vehicles involved in a fleeing driver event for 28 days (section 96(1AB) of the LTA).
113. This option would retain the requirement for a vehicle to be released if charges are not laid.
114. Current review and appeal mechanisms under sections 102 (appeal to Police) and 110 (appeal to the courts) of the LTA for vehicle owners who have had their vehicles impounded would apply to extended impoundments.

*Analysis:*

115. This option would be a swift and significant sanction. While fleeing drivers are less likely to be influenced by the likely financial or criminal penalty, removing the vehicle could have a strong specific deterrent effect, preventing further offending with that vehicle for the period of impoundment. This is supported by evidence that suggests that penalties which emphasise loss (of a licence/vehicle) may be more effective at changing behaviour.<sup>39</sup>

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

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

116. This option may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicle. This is supported by evidence, suggesting that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.<sup>40</sup> It could improve general road safety, as vehicles involved in fleeing driver events would be removed from the road for an extended period.
117. However, increasing the period of impoundment in itself is unlikely to have an immediate deterrent effect on current offending. There is a risk that the fleeing driver may find another vehicle to drive and may continue to drive dangerously.
118. There is also a risk that the possibility of a lengthier impoundment may lead people to flee more often and to flee in a more dangerous manner.<sup>41</sup>
119. In instances of vehicles being financed, there is also a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person of the vehicle would have to continue paying the loan.

*Implementation of this option is likely to be challenging...*

120. This option would increase the number of impounded vehicles, which would place additional pressure on an already overwhelmed towage and storage system.
121. This option would likely increase the number of vehicles abandoned by their registered person. As a result, there is a significant risk that this option would exacerbate the current a shortage of towage and storage operators available and willing to undertake Police impoundments.
122. Operators who undertake Police impoundments risk financial loss, as registered persons often abandon low-mid value vehicles or refuse to pay their fees. The current abandonment rate varies between 10-15% of impounded vehicles, which is an average of 2,500 vehicles per annum. If a vehicle fails to be recovered by the registered person, a rebate of \$253 is available to a towage operator from Waka Kotahi NZ Transport Agency. However, this often does not recoup costs for operators.
123. Anecdotal evidence from the Motor Trade Association, which represent towage and storage operators, is that from a recent survey of 8 operators, \$500,000 was owed to the group as a whole, with one operator being owed as much as \$175,000 in towage and storage fees. This has resulted in some operators no longer uplifting Police impounded vehicles if the vehicles are too far away, of low value, is damaged, unregistered, or unwarranted, or the tow operator considers that the registered person will be unlikely to pay the fees.
124. There is also a risk that towage and storage operators would not have the capacity to store these vehicles for periods of six-months, and would be unable to secure lots large enough to do so. This may ultimately undermine the effectiveness of the proposal if cars cannot be impounded for the suggested period.
125. Te Manatū Waka is currently undertaking a review of towage and storage fees, as there as known system issues with the inability to recover costs impeding the supply of

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<sup>40</sup> Ibid.

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

operators. However, this review will be a two-staged approach, and will not be completed before the 2023 election.

126. This option could also potentially increase the volume of appeals to Police and the courts, which would have an impact on Police BAU and the court system.

*This option may have NZBORA implications...*

s 9(2)(h)

*There are also equity issues...*

132. This option would have a greater impact on people without access to other transport options, who may need their vehicle to travel to work, the supermarket, healthcare, and other services.
133. It may also unfairly penalise people who are not involved in the commission of an offence (such as a parent who has lent their vehicle to their child). For those whose vehicles were used in the commission of an offence, without their knowledge, the burden would be high.
134. This option may also adversely impact Māori and Pacific people, who are over-represented in fleeing driver events and related offending. In particular, this option could result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated. Māori are also more likely to live and work in small urban areas (14.7% of the Māori population) or rurally (18% of the Māori population), when compared with the total population (10% and 16.3% respectively)<sup>42</sup>. These areas are not usually well served

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

by public transport, which means Māori may be disproportionately hindered from accessing key amenities, including vital services for health.

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

#### *Description:*

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

#### *Analysis:*

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

s 9(2)(h)

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

<sup>44</sup> *Ibid.*

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

*This option has significant equity implications*

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

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

*Description:*

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

*Analysis:*

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

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

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

161. The feasibility of implementing this option is currently uncertain, and further resource would be required to assess this. It would avoid the significant operational challenges of extended impoundment described in option 1C (e.g. risk of vehicle abandonment and cost implications for Police and towage and storage operators). However, it is likely it would result in a significant increase in the volume of appeals, which would have an impact on the court system. It may also result in the court not imposing other penalties, because they view the permanent removal of vehicles as a sufficient punishment.
162. Implementation could also be impeded by limitations in the Motor Vehicle Register (the Register). Due to the registered person transfer process that requires the new registered person of the vehicle to update their details, some vehicles are registered to "unknown" or have incorrect addresses associated with vehicles. In addition, there may be vulnerabilities that could be deliberately taken advantage of by offenders seeking to avoid vehicle seizure. The Register does not flag concerns if a vehicle has had frequent changes to the registered person in a period of time, and vehicles that are subject to a confiscation order under the Sentencing Act are not tracked through the Register.

*This option would have significant BORA implications ...*

s 9(2)(h)

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



*This option also has significant equity implications...*

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

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



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

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

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

**Key:**

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

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

None of the options scored higher than the status quo in the multi-criteria analysis table above, although options 1A and 1B are not considered worse than the status quo. As a result, there is no preferred option. However, Ministers requested further analysis on options 1A - Increasing driver licence disqualification periods for failure to stop offences, 1C – Enabling temporary removal of vehicles for failing to stop (six months impoundment), and 1D – Enabling permanent removal post- conviction for failure to stop (forfeiture).

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## What are the marginal costs and benefits of the option?

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

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

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

**Option 1C – Enabling temporary removal of vehicles for failing to stop (six months impoundment)**

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups – towage and storage operators	This may increase the number of abandoned vehicles that operators need to attempt to resell in order to recoup costs.	Medium	High – this is a known risk.
Regulators – Waka Kotahi and Police	Ongoing – Waka Kotahi will continue to pay a rebate of \$253 for abandoned vehicles.	High – This is funded through the Road Safety Activity Class which is overspent.	High – This issue prompted a 2019 increase in the rebate to alleviate concerns in the short-term.
Regulators –Police	Ongoing – would be an increase in appeals (these have to be reviewed by a Senior Sergeant or above). Would increase costs for Police, if they were unable to recoup costs for abandoned vehicles.  One off cost for Police in relation to implementation. This would include updating Internal policies and procedures, and providing frontline staff with guidance. This may include IT changes.	Medium	Medium
Regulators – courts	Ongoing – increase in volume of appeals.	Low	Medium

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Road users	One-off – Offenders will be liable for the towage and storage fees.	Medium	High
<b>Total monetised costs</b>		Medium	Medium
<b>Non-monetised costs</b>		N/A	N/A
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups – towage and storage operators	N/A	N/A	N/A
Regulators – Waka Kotahi, Police, and the courts	Police would have a new tool to respond to fleeing drivers.	High	High
Road Users	On-going - may increase road safety impact, as it would remove vehicles from the road for the period of impoundment.	High	Medium – This has been demonstrated through the introduction of the 28-day impoundment for disqualified drivers.
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>		High	Medium

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

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

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

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

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## Identifying fleeing drivers after the event

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

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

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

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

#### Option – Status Quo

##### *Description:*

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

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

##### *Analysis:*

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

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

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

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

##### *Description:*

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

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

*Analysis:*

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

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

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

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

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

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

s 9(2)(h)

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

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

<sup>51</sup> *Ibid.*

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

<sup>53</sup> *Ibid.*

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

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

### *Description:*

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

### *Analysis:*

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

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

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

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

s 9(2)(h)

*This option would also have significant equity implications...*

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

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

*Description:*

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

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

*Analysis:*

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

*This option is likely to have significant NZBORA implications*

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

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<sup>57</sup> Te Manatū Waka data July 2019.

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

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

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

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

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

s 9(2)(h)

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

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

#### *Description:*

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Report of the Attorney General, page 4.

<sup>65</sup> Report of the Attorney General, page 4.

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



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

*Analysis:*

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

s 9(2)(h)

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

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



*This option has significant equity implications...*

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

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

*Description:*

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

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

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

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

*Analysis:*

239. This option would be a significant sanction, as offenders could get their car permanently removed and would not get any proceeds from the sale back. This would signal the seriousness of the offending.
240. Recent EBPC research indicates that interventions, such as post-event investigations and targeting penalties to the registered person, which increase offenders' perceptions that they will be identified and held to account even where they are not apprehended via a pursuit, are expected to have an effect on overall offending.<sup>70</sup>
241. This option may provide additional incentive for the registered person to provide information to Police. It may also encourage the registered person to take greater responsibility in terms of who they let drive their vehicles. This is supported by evidence, that suggests that swift and certain sanctions which target the vehicle could encourage the registered person to limit high risk drivers' access to their vehicle.<sup>71</sup>
242. As this option would permanently remove vehicles from the road, it may have a positive impact on road safety.
243. However, courts use the current discretionary confiscation power infrequently<sup>72</sup>. There is a risk that this lever will not be used either.
244. In instances of vehicles being financed, there is also a risk that this option could increase the likelihood of the registered person defaulting on payments. This is because they may be unwilling or unable to pay a loan on a vehicle they do not have access to. Further consideration would need to be given as to whether a company with a security interest could apply to the court to repossess the vehicle to recover finance costs, or whether the registered person would have to continue paying the loan.
245. In terms of feasibility of implementation, this option would be similar to the status quo, as the ability for courts to confiscate vehicles already exists. However, there could be a potential increase in the volume of appeals, which would have an impact on the court system.

s 9(2)(h)

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

<sup>71</sup> Ibid.

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

*This option has significant equity implications...*

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

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

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

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

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

**Key:**

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

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

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

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## What are the marginal costs and benefits of the option?

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

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

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



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

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

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

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

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## Section 3: Delivering an option

### How will the new arrangements be implemented?

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

#### *Implementation risks*

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

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

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

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

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