

29 May 2019

Committee Secretariat
Transport and Infrastructure Committee
Parliament Buildings
WELLINGTON
By email: ti@parliament.govt.nz

**SUBMISSION on
Land Transport (Wheel Clamping) Amendment Bill**

1. Introduction

Thank you for the opportunity to make a submission on the Land Transport (Wheel Clamping) Amendment Bill. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial, and comprehensive consumer information and advice.

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We wish to speak to our submission.

2. General comments

Wheel clamping on private land has been an ongoing cause of complaints to our office. These complaints typically involve consumers clamped in shopping car parks where there has been no or inadequate signage about the terms that apply to the car park's use. Fees for the vehicle's release have been \$200 or more.

In our view, the legal basis for wheel clamping vehicles on private land is not well-founded and we have supported a ban on the practice. We consider property owners have adequate means of controlling unauthorised parking on their land, without the need to resort to wheel clamping.

Further, wheel clamping not only deprives drivers of the use of their vehicle, but also means they have no opportunity to challenge the action before paying the required fee for their vehicle's release.

In the absence of a clamping ban, we support the introduction of legislation to regulate the maximum fees charged by wheel clamping operators. However, we consider the Land Transport (Wheel Clamping) Amendment Bill should include additional safeguards to protect consumers from unfair wheel clamping practices.

3. Specific comments on the Bill

3.1 Clamping fee

The bill sets \$100 as the prescribed amount that may be charged by wheel clampers, unless a different amount is set under regulations.

We consider \$100 to be excessive and disproportionate to maximum fees set for parking offences on public land. Where a person parks a vehicle on a public road, fees for overstaying the allocated time are as follows:

- Not more than 30 minutes: \$12.
- More than 30 minutes but not more than one hour: \$15.
- More than one hour but not more than two hours: \$21.
- More than two hours but not more than four hours: \$30.
- More than four hours but not more than six hours: \$42.
- More than six hours: \$57.

In our experience, complaints about wheel clamping on private land often involve situations where the consumer has only parked on the property, or exceeded the allocated time, for a short period.

For example, in one complaint to our office, a woman parked in an empty lot adjacent to a public library to return books. She estimates she was away from the car for two minutes but returned to find it clamped. The \$100 fee proposed in the bill would mean consumers in similar situations would be charged a fee equivalent to \$50 per minute.

The \$100 maximum is also higher than fees typically charged by major private carpark operators for breaches of their terms and conditions. We also note operators that are signatories to the Code of Practice for Parking Enforcement on Private Land allow a "reasonable grace period" after parking has expired before issuing breach notices.¹

Page 8 of the code states:

[The operator] should allow a driver who enters your car park a reasonable "grace period" in which to read terms and conditions signs and decide if they are going to stay or leave without having their vehicle issued with a parking breach notice. You should allow the driver a reasonable grace period, for example 10 minutes, to leave the car park after the parking contract has ended, before considering enforcement action.²

We note "grace periods" are also often allowed by councils when enforcing parking rules on public land.

In Ireland, where wheel clamping is regulated, the Vehicle Clamping and Signage Regulations 2017 allow a grace period of 10 minutes before clamping can occur.³

We recommend the committee:

- Set the maximum fee that can be applied at no more than \$50.

¹ The code has been adopted by Secure Parking, Tournament Parking and Wilson Parking. See <https://www.consumerprotection.govt.nz/assets/PDFs/Code-of-Practice-Parking-Enforcement-on-Private-Land.pdf>

² Ibid; p8.

³ See https://www.nationaltransport.ie/wp-content/uploads/2017/10/Vehicle_Clamping_Signage_Regulations_2017.pdf

- Add to the bill a “grace period” before a wheel clamp can be applied to a vehicle in a private carpark.

3.2 Minimum signage requirements

We consider the bill should also provide for regulations to be made prescribing minimum signage requirements where clamping is used.

A common complaint from consumers who have been wheel clamped is the absence of signage explaining the parking rules, or if signage exists, the ambiguity of the rules or lack of visibility. Property owners’ failure to invest in basic parking signage and controls effectively transfers costs they should bear on to consumers.

For example, last year an Auckland man had his car clamped outside the Consulate General of the People’s Republic of China. He took the clamping company to the Disputes Tribunal arguing signs at the carpark were not clear. The Disputes Tribunal ruled in his favour, stating there was no clear notice warning of the clamping policy.⁴

Signage has been held to be insufficient in other clamping and towing cases that have come before the Disputes Tribunal.⁵

In Ireland, wheel clamping regulations require parking controllers to provide and maintain signs that meet specified requirements. The regulations state all signs must:

- (i) *be constructed to a good standard of work;*
- (ii) *be made of good quality, durable, weather resistant materials suitable for the location where the sign is, or is intended to be, located;*
- (iii) *provide sufficient colour contrast between the text and its background to ensure legibility;*
- (iv) *be maintained complete, in good condition and free from any significant blemish; and*
- (v) *be maintained clean such that the text and information is visible at all times.*

Importantly, signage must be provided at the carpark entrance/s.

We consider similar rules are required in New Zealand if the consumer detriment from unfair wheel clamping practices is to be addressed. If minimum signage requirements aren’t introduced, clampers will be able to continue clamping vehicles without providing consumers with adequate notice this will occur.

3.3 Infringement offence

New section 98C(4) makes it an offence for wheel clampers to charge fees higher than the prescribed amount and to fail to remove a clamp within a reasonable time or when directed. We strongly support these being made infringement offences, allowing enforcement officers to issue infringement notice fines.

3.4 Challenge clamping decisions

We also consider consumers need the ability to challenge charges where they have been unfairly clamped. While consumers can take the wheel clamping company to the Disputes Tribunal, they must pay a \$45 non-refundable filing fee. This fee can act as a disincentive to taking action.

⁴ Reported at https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12143746

⁵ See <https://www.disputestribunal.govt.nz/assets/Documents/Decisions/AAE-v-ZZV-2012-NZDT-32-18-May-2012-FINAL.pdf> and <https://www.disputestribunal.govt.nz/assets/Documents/Decisions/AN-v-ZM-Ltd-2012-NZDT-581-20-January-2012.pdf>

We recommend the committee consider amendments to the Disputes Tribunals Act providing that the \$45 is refundable where the consumer's claim is successful. This would help overcome the barriers to consumers who want to seek redress through the tribunal.

Alternatively, the New Zealand Transport Agency (NZTA) could be given the ability to hear appeals relating to wheel clamping. This option would provide additional oversight of wheel clamping and a means of monitoring whether the legislation was achieving its intended effect.

Thank you for the opportunity to make a submission on the bill. If you require any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue Chetwin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sue Chetwin
Chief Executive