

New Zealand Law Society

Submission on

Land Transport (Enforcement Powers) Amendment Bill (LTEPAB)

Vehicle Confiscation and Seizure Bill (VCSB)

Introduction

1. The Society's submission relates to four areas of these bills:

“Cruising” - definition and clause 7 (s22AB) LTEPAB

Publication of bylaws - clause 7 (s22AE) LTEPAB

Mandatory seizure of vehicles - clause 16 LTEPAB

Third party (financier) interests - clause 7 VCSB.

“Cruising”

2. The Society is concerned that clause 7 of the LTEPAB allows for authorities to pass bylaws banning “cruising”.
3. The power to ban such activities is problematic, for the following reasons:
 - 3.1 The definition of ‘cruising’ captures hitherto legal activity, which in itself creates no harm. The general policy statement in the Explanatory Note acknowledges that the illegal activity being targeted is already addressed by existing law, but has turned out to be difficult to enforce. It appears that the idea of banning “cruising” is to allow for an otherwise legal and harmless activity to be made illegal as a means of targeting another illegal activity. Making illegal a hitherto legal and harmless activity is not a desirable method of legislation.
 - 3.2 The targeting of “cruising” may amount to a breach of the rights to freedom of association and movement, contained in ss17 and 18 of the New Zealand Bill of Rights Act 1990. Furthermore, given the prima facie legal and harmless nature of “cruising”, the Society is concerned that there is no demonstrably justifiable need for such rights to be infringed.

- 3.3 The definition of “cruising” is very broad, with a limited requirement for ‘intent’ on the part of the driver concerned. The definition of “cruising” is also open to considerable difference in interpretation as to, for example, what counts as “repeatedly”, whether driving repeatedly “draws attention to” the vehicle concerned, or creates a “convoy”. In essence, the Society is concerned that the definition may be too broad (in that it may capture people who simply decide to drive more than once down a stretch of road, there being no other intentional aspect to the ‘offence’), and be too open to divergent, and on occasion ‘convenient’, interpretations, thereby risking abuse by law enforcement officers.
- 4 If this definition is to be enacted into law, Parliament would need to be satisfied that there is a compelling objective to render “cruising” illegal (through bylaws), and that the use of this definition of “cruising” attains that objective while making the least possible limit on the fundamental right of a person to move freely where he or she pleases. For reasons given, the Society does not think this test is presently satisfied, because the bill if enacted would authorise bylaws to regulate freedom of movement in circumstances that are vague and open to potential abuse.

Recommendation

5. That clause 7 of the LTEPAB, allowing for the passing of bylaws to ban “cruising” (and consequential matters) be deleted or that a much more restrictive definition be included that removes the concerns addressed above.

Publication of Bylaws

6. Although there is a requirement that any bylaws passed be published, there is no practical assurance arising from the language in the Bill that such publication will necessarily reach the intended audience.
7. The Society notes the practice whereby territorial authorities use signage to advise the public of matters such as liquor bans. Requiring that bylaws be published in the same

way would be an appropriate safeguard. Alternatively, publication of any bylaws in local newspapers would provide an alternative, although likely less effective, option.

Recommendation

8. That clause 7 of the LTEPAB be amended (at the new proposed ss22AE) to require publication of any bylaws either on roadside signs or by way of prominent (that is, half page or greater) publication in local newspapers.

Mandatory seizure of vehicles

9. Clause 16 of the LTEPAB will *require* law enforcement officers to seize a vehicle where they believe, on reasonable grounds, the driver has committed a breach of a bylaw created under clause 7.
10. The Society is concerned that this power may amount to an unnecessary breach of the principle that citizens should not be punished or deprived of property without due process, which includes the rights to be considered innocent until proven guilty, and to natural justice, encapsulated in the New Zealand Bill of Rights Act 1990 and at common law.
11. The law already provides for law enforcement officers to seize or impound vehicles where they are being operated in breach of existing laws, including situations where they are being operated carelessly, recklessly, or with criminal intent. The Society is concerned that extending the power to seize vehicles which are, in effect, merely “cruising”, is a step too far, in that the “cruising” in and of itself is of limited consequence, and is, as noted in paragraph 3.1, open to a broad range of interpretation and arguably inadvertent occurrence, and that if vehicles are in fact being used to breach existing legal provisions, there are already provisions allowing for the vehicle to be seized.

Recommendation

12. That clause 16 of the LTEPAB be amended to delete references to inserting a new subsection 1AA to s96.

Third Party (Financier) Interests

13. Clause 7 of the VCSB allows for third parties, with interests in vehicles, to be advised of situations where the vehicle becomes at risk of being seized for subsequent breach.
14. In commercial terms, this would allow the third party to consider whether to exercise any rights to repossess the vehicle in order to protect its security, if such provisions are provided for in the commercial documents governing their interest.
15. In some cases, seizure (at least on the terms in these bills) may not have been contemplated by the parties. Accordingly, it may be prudent to provide indemnity from civil liability to any third party choosing to repossess a vehicle in which it has a security interest of greater than 50% or a set monetary value.

Recommendation

16. That a new clause be added to the VCSB, providing for immunity from civil suit for any third party with a beneficial interest in a vehicle of greater than 50% of its value, or of a value in excess of a defined amount, should they move to repossess that vehicle following advice that it is at risk of seizure (subject to payment from proceeds of sale to any sum gathered in excess of the beneficial interest amount).

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