New Zealand Law Society
Te Kāhui Ture o Aotearoa

Antisocial Road Use Legislation Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

29 September 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Antisocial Road Use Legislation Amendment Bill (**Bill**). The Bill is an omnibus Bill seeking to amend the Land Transport Act 1998 (**LTA**), the Sentencing Act 2002 (**SA**), and the Policing Act 2008 (**PA**). Minor amendments to the maximum penalty and appeal regimes are also proposed that affect other legislation, such as the Criminal Procedure Act 2011 (**CPA**) and the Land Transport (Offences and Penalties) Regulations 1999 (**LTA penalty regulations**).

1.2 This submission has been prepared by the Law Society's Criminal Law and Human Rights and Privacy Committees.[1]

1.3 The Law Society **wishes to be heard** on this submission.

2 General comments

2.1 The proposed purpose of the Bill is to reduce antisocial road use (**ASRU**) offending and the harm it may cause to community safety and property. ASRU is defined as a combination of five offending activities using motor vehicles. These are: illegal street racing, dirt bike gatherings, intimidating convoys, siren battles, and fleeing drivers (**the ASRU offences**). In summary, the Bill seeks to achieve its objective by:

(a) Creating a new "frightening or intimidating convoy" offence;

(b) Broadening powers to compel information to be given to Police about drivers who fail to stop;

(c) Broadening powers to seize, impound, forfeit, or forfeit and destroy vehicles;

(d) Creating a presumption of forfeiture or forfeiture and destruction of vehicles upon first conviction for certain driving-related offences;

(e) Giving Police a new power to close roads and other public areas temporarily where certain anti-social driving behaviour is currently/or is reasonably expected to occur; and

(f) Creating a new infringement offence for failing to leave the temporarily closed area.

2.2 The Law Society acknowledges the importance of responding to and deterring anti-social driving behaviours that negatively impact road and community safety in New Zealand. However, as currently drafted, we consider the Bill has some workability and drafting issues, and there is a potential that unintended consequences may arise. These issues should be addressed before the Bill is progressed.

2.3 This submission sets out these issues and, where possible, recommends changes to address them. Broadly, the submission provides comments on:

(a) Limitations and constraints on policy analysis and consultation;

[1] More information about the Law Society's Law Reform Committees is available on the Law Society's website: NZLS | Law reform committees.

(b) The "frightening or intimidating" convoy offence;

(c) The power to compel information;

(d) The presumption in favour of forfeiture, or forfeiture and destruction of vehicles;

(e) Orders prohibiting an offender acquiring a new interest in a motor vehicle;

(f) Temporary closing of roads and places; and

(g) Other matters.

3 Limitations and constraints on policy analysis and consultation

3.1 The Law Society notes that the Regulatory Impact Statement (**RIS**) for the Bill states that the policy analysis conducted has 'significant limitations.'[2] These limitations include:

(a) limited policy options for consideration;

(b) limited evidential data on the frequency and trends of intimidating convoys/use of common assumptions; and

(c) a lack of consultation with stakeholders or the public.

3.2 It is important that a full and considered policy development process is followed, in response to well-defined policy problems. This ensures that resulting legislation is a high-quality, effective and enduring response to the identified problem.[3] This is especially important where powers are imposed that constrain rights and criminalise behaviours, as proposed in the Bill.[4]

3.3 The RIS states there are concerns that the Police need greater powers to respond to this type of offending because it is difficult and risky to intervene in large events and convoys. It cites safety concerns, resource constraints, and logistics as reasons for this difficulty.[5] While we generally agree with the identified issues and concerns, we query whether the proposed changes will effectively address these risks. The Bill does little to make it safer or more feasible for Police to intervene in large events and convoys, and primarily addresses only the possible responses once such intervention has taken place.

3.4 The Bill relies on deterrence as the primary response to ASRU offending. While deterrence is a part of the existing approach to offences under the LTA, it is not clear that these additional offences will further deter offending, particularly in the face of acknowledged resource constraints, and complex behavioural and systemic issues. A more comprehensive and unconstrained policy development process would enable an analysis of alternative interventions, ensuring that the legislative response is effective, proportionate, and can respond to the underlying causes of ARSU behaviour. It would also enable consideration of the likely behavioural response to the offence provisions, including the forfeiture and/or destruction provisions and proposed section 142AAL. It

2 Ministry of Transport "Regulatory Impact Statement: Powers, offences and penalties to address anti-social road users" (26 November 2024) (**RIS**) at p 2.

3 See Legislation Design and Advisory Committee Legislation Guidelines (2021), chapter 1.

4 See Crown Law "BORA VET: version 10.0 of the Antisocial Road Use Legislation Amendment Bill consistency with the New Zealand Bill of Rights 1990" (**BORA advice**).

5 RIS at [3] – [10].

may be, for example, that offenders simply purchase new vehicles and register ownership to friends or family members.

3.5 As has been mentioned in previous submissions,[6] consultation during policy development is essential to ensure proposals are workable and fit-for-purpose. This has not occurred here. For example, the towage and storage providers, crucial for the operational implementation of the Bill, have not been consulted.[7] We consider it would be preferable that the progress of the Bill is paused while consultation and further policy work is undertaken to address the identified risks and constraints, before proceeding.

4 The "frightening or intimidating" convoy offence

4.1 Clause 10 inserts new section 39A into the LTA. It provides that a person commits an offence of dangerous or reckless activity conducted in a frightening or intimidating convoy if they use a motor vehicle to engage in dangerous or reckless activity, whilst part of a convoy, if they intend, know or are reckless as to whether that conduct is likely to frighten or intimidate another person (**the convoy offence**).

4.2 The penalty upon conviction is the forfeiture, or forfeiture and destruction, or seizure and impoundment of the vehicle used in the commission of the offence.[8]

Drafting issues

New section 39A(2)

4.3 Subclause 10(2) lists the driving offences that, for the purposes of the convoy offence, would be considered dangerous or reckless activity offence conduct. This list of offences includes both the standard reckless, dangerous, and careless conduct offences, as well as the aggravated forms of the offence.[9]

4.4 The Law Society considers that the drafting of this proposed subsection could be made clearer by setting out that the dangerous or reckless activity offence conduct means conduct specified in one or more of the standard offences (then listed), and adding a sub-section that stipulates that aggravated forms of the driving offences can also be the dangerous or reckless activity offence conduct referred to.

New section 39A(4)

4.5 Proposed section 39A(4) is poorly drafted and unclear in its language and intent. We note that it:

(a) defines a convoy as vehicles travelling 'together', but also suggests a vehicle can somehow 'travel with a convoy' while not intentionally or knowingly travelling as part of that convoy; and

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6 See Oranga-Tamariki-Responding-to-Serious-Youth-Offending-Amendment-Bill.pdf, and Crimes-Stalking-and-Harassment-Amendment-Bill.pdf, for example.

7 RIS at p 2.

8 Clause 10(6).

9 For example, careless, dangerous or reckless driving that causes injury or death is considered an aggravated offence (see sections 35 – 36AA of the Land Transport Act 1998).

(b) in doing so, appears to effectively enable the travel of one vehicle to form a 'convoy' for the purposes of new section 39A(1)(c), the second vehicle simply being another vehicle travelling in the vicinity.

4.6 This could lead to the offence being applied in situations where a person was not intentionally or knowingly operating their vehicle as part of a convoy. The intent behind this drafting is not addressed in the RIS, and it is not clear whether it is intended to:

(a) ensure that individuals cannot avoid being captured by the definition of 'convoy' by simply putting an innocent driver's vehicle between the offending vehicles in the convoy. If this is the case, the current wording of the clause does not clearly convey this intention; or

(b) capture a broader range of offending, i.e., a single vehicle that travels alongside other (unknowing) vehicles and engages in specified conduct. If this is the case, these are existing driving offences for which the additional 'convoy' element is not warranted.

4.7 The Law Society considers that the drafting of proposed subsection 39A(4) should be amended to improve clarity of the offence before the Bill passes. For example, this could be remedied by amending the clause to read:

(a) Convoy means a group of 2 or more motor vehicles *intentionally* travelling together; and

(b) A person operates a motor vehicle as part of a convoy if the person *and the operator of at least one other vehicle travelling together* are intentionally or knowingly operat*ing their respective* vehicles to travel as part of that convoy.

4.8 If proposed section 39A(4) is intended to ensure that a convoy offence can still occur where the vehicles of members of the public are interspersed within the convoy we suggest that subclause is redrafted in its entirety to achieve that.

5 The power to compel information

5.1 Clause 20 replaces section 118 of the LTA. It expands the power to compel the registered owner or hirer of a vehicle to provide identifying information about the driver of the vehicle, immediately (and in certain situations, within 14 days). The power to compel a person to provide information raises concerns about the right to silence. We note that Crown Law provided an analysis of the Bill for consistency with the New Zealand Bill of Rights Act 1990 (**BORA advice**), which considers the impact of the Bill upon the right to silence as affirmed by section 23(4) of BORA.

5.2 The BORA advice provides that the right to silence applies to those who are in custody. It also states that:[10]

10 BORA advice at [15].

> … if the owner or hirer is in police detention they have the right to refrain from making a statement. If they are detained in respect of the offending for which the driver is sought the power to require information does not arise.

5.3 However, the Law Society considers that the right could be engaged. If an owner is in custody, but a car registered under their name is used for ASRU offending that occurred on another occasion, and the owner is questioned by Police about who was driving during the ASRU offending, the section 23(4) right would likely be infringed. This could occur, for example, where a gang member is in prison for separate offending and another gang member borrows the first member's vehicle whilst they are in custody, and the vehicle is then used in another offence. It is a relatively common occurrence for such borrowing to occur between members.

5.4 The same issue arises in relation to delayed reports, as provided in proposed new section 118A and 118B, with slightly less overall concern given the person would have time to consult with a lawyer.

5.5 The BORA advice only briefly addresses the potential for rights infringement where information is compelled. It states that 'particular care' by Police is needed, as such evidence would likely 'be ruled inadmissible.'[11] We anticipate this is a reference to section 30 of the Evidence Act 2006, which sets out the test to be applied for the admissibility of evidence in court, where that evidence has been improperly obtained, for example in breach of a right protected under the Bill of Rights Act.

5.6 The Law Society suggests that further analysis of admissibility, the right to silence, and the compulsion of individuals in custody is necessary to ensure rights compliance. Leaving the issue to be resolved by the courts, once a breach has occurred, is not a best practice approach to ensuring rights consistent legislation, particularly in light of the fact that up to eighty percent of improperly obtained evidence may nonetheless be ruled admissible.[12] The admissibility of evidence obtained in breach of the Bill of Rights Act seeks to balance (amongst other factors) the value of the evidence against the level of impropriety. It is not, as it presently functions, protective against rights infringement.

5.7 The same issue has been considered and resolved, for example, in section 130 of the Search and Surveillance Act 2012 and section 133 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Each contain provisions specifying that a person is not required to provide information that would incriminate them.

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11 BORA advice at [25]: "*There is a possibility that the demand to provide information about the driver could limit the right of a person arrested or detained to refrain from making a statement. But this could only arise if the owner has been arrested or detained for a reason unconnected to the antisocial driving. If the demand for information compromised the right to silence it is likely that the evidence obtained by that method would be ruled inadmissible*. *Constables will need to take particular care when demanding information from a person they have detained. We do not consider that, if enacted, the Bill will necessarily give rise to a breach of s 23(4) of the Bill of Rights Act or a high risk of such a breach.*"

12 *Tamiefuna v R* [2025] NZSC 40 at [106].

6 The presumption in favour of forfeiture, or forfeiture and destruction of a vehicle

6.1 Clause 36 inserts proposed new sections 142AAG to 142AAN into the SA. These sections relate to the presumption in favour of forfeiture, or forfeiture and destruction of a vehicle used in the commission of an ASRU offence.

6.2 New section 142AAH sets out the types of convicted offending that result in a presumption in favour of forfeiture or forfeiture and destruction. These are:

(i) An aggravated failing to stop offender:

(ii) A failing to provide information offender:

(iii) A frightening or intimidating convoy offender: or

(iv) A street racing activity offender.

6.3 Proposed new section 142AAI then provides the judicial discretion as to when the court must not make a forfeiture order per new section 142AAH.

Failing to identify driver

6.4 Proposed new section 142AAI(b) indicates that a person convicted of failing to identify the driver of the vehicle would not be granted relief from forfeiture if the court is satisfied that the car was stolen at the time of the offence. It is the only type of offending specified in new section 142AAH(1)(a) that is not included in section 142AAI(b).

6.5 The Law Society queries whether this omission is intentional. If it is, the rationale for it is unclear. If the court is satisfied (which would require evidence and not simply a statement that the vehicle was stolen), and the charge arises in the context of a delay in disclosing the information (perhaps to allow time to consult a lawyer), the offender should be entitled to receive relief the same as the other classes of offenders.

No interest in motor vehicle for 12 months

6.6 Proposed new section 142AAL provides that if any of the following orders apply to an offender, the offender must not, within 12 months, acquire any interest in any motor vehicle:

(a) Forfeiture order, or

(b) forfeiture and destruction order, or

(c) prohibition from acquiring a motor vehicle order.

6.7 However, we note that, on current drafting, unlike the forfeiture, or forfeiture and destruction orders, there is no discretion as to the application of this section. This will likely have a disproportionate impact on more disadvantaged offenders. For example, a young adult who comes from a family that does not own multiple vehicles may not have the means to borrow a vehicle to use without acquiring an interest in the vehicle. Whereas a young adult from a well-off family may have at their disposal multiple vehicles that could be borrowed. The absence of discretion means a judge will not be able to account for disproportionately severe impacts.

6.8 There are also other situations in which the order not to obtain an interest in a motor vehicle may cause extreme hardship. These include situations in which people live rurally and cannot attend work or study, or essential daily living tasks such as attending the grocery store or doctor's office without the use of a private motor vehicle. We consider it may be worthwhile reviewing whether it would be appropriate to include judicial discretion as to the applicability of the order, or a provision for extreme hardship, similar to new section 142AAI. We note that the equivalent provision at section 131 of the SA does provide for judicial discretion.

Appeal right

6.9 Proposed new section 142AAM sets out the process for an appeal to be lodged by a third party against the forfeiture, or forfeiture and destruction of, a motor vehicle.

6.10 The Law Society reflects that the proposed appeal regime appears to be modelled on the Criminal Proceeds (Recovery) Act 2009, whereby the forfeiture is considered a civil penalty in addition to, but distinct from, the criminal sanction faced. The practical effect of this is that a lower proof threshold is required, and no discounts would be able to be applied in sentencing. A civil forfeiture regime would also run counter to the existing instrument criminal forfeiture regime as set out in the SA.[13]

6.11 The instrument forfeiture provisions are criminal and count as a criminal penalty. This means that when a forfeiture is offered or applied, it counts towards sentence totality and/or credit may be given for the forfeiture. Arguably, a motor vehicle used for offending is an instrument of crime, and thus, the proposed motor vehicle forfeiture regime has similarities to the existing criminal forfeiture regime.

6.12 As such, jurisdictional decisions, like whether the forfeiture is considered a civil penalty or a criminal sanction, have a significant impact on the practical workings of the regime. In our view, the jurisdictional decision should be an explicit and intentional one.

6.13 Further, section 142 of the SA, regarding an application for confiscation order to be cancelled by a bona fide purchaser who purchased following a conviction, envisages an application being made in the criminal courts. We note this is not intended to be repealed, which means that should the proposed section 142AAM remain a civil process an anomaly would occur whereby:

(a) A bona fide purchaser who purchased *after* conviction of the defendant can make an application in the criminal court to set aside the confiscation order – where grant of that application must be granted; but

(b) A bona fide purchaser who purchased *prior to* conviction must instead make a civil appeal under the new section 142AAM, where undue hardship must be shown in order to achieve relief.

6.14 The Law Society therefore recommends that the proposed forfeiture regime be explicitly deemed criminal.

13 Sentencing Act 2002, sections 142A to 142Q.

6.15 As an additional note on new section 142AAM, the Law Society has also identified an anomaly of the appeal right conferred by section 142AAM(7). Ordinarily, if a sentence is imposed by Community Magistrate, an appeal of the sentence is to a DCJ. However, new section 142AAM(7) would confer the appeal right to the High Court.

7 Temporary closing of roads and places

7.1 Clause 42 replaces section 35, and inserts proposed section 35A, of the PA to grant Police the power to temporarily close:[14]

> a place that is capable of being used, or is being used, by the public for motor vehicle access, -
>
> (a) Whether free or on payment of a charge; and
>
> (b) Whether or not any owner or occupier of the place is lawfully entitled to exclude or eject any person from it.

7.2 Police may also temporarily close to traffic any road, or part of a road, or direct persons to leave or not to enter the place. We note that the only limitation on these powers is that a constable believes on reasonable grounds that any of the listed ASRU offence activities are being committed or may reasonably be expected to be committed.[15]

7.3 We note that the definition of 'place' may be interpreted to include private or commercial property. For example, churches, businesses, and marae. We query the appropriateness of Police being given the power to direct the occupiers of these places to leave or not enter their own property – for example, a business owner, bishop or kaumatua.

7.4 We understand there will be an implicit requirement to use the power reasonably; however, we query whether the broad scope of this proposed power means that some limitations or pre-conditions should be expressly provided in the legislation. We note that the BORA advice indicates a preference for pre-conditions to be set out in the PA, and we agree.[16]

7.5 Some examples of potential pre-conditions that could be considered are:

(a) That the constable has reasonable grounds to suspect that, if the road or place is not immediately closed, either or both of the following may occur:

(i) The person(s) will leave there to avoid arrest: or

(ii) The ASRU offence that is being committed, or about to be committed, would be likely to cause injury to any person, or serious damage to, or serious loss of, any property, or there is risk to the life or safety of any person that requires an emergency response.

7.6 The Law Society recommends the Select Committee consult officials and consider including pre-conditions in proposed new sections 35 and 35A, in line with the expressed preference of the BORA advice.

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14 Antisocial Road Use Legislation Amendment Bill, proposed section 35A(5).
15 Antisocial Road Use Legislation Amendment Bill, proposed section 35A.
16 BORA advice at [30].

8 Other matters

8.1 The Law Society supports the intention to reduce the impoundment time from six months to 28 days for failing to stop offences.

Nāku noa, nā

Mark Sherry
Vice President