
Land Transport (Road Safety)
Amendment Bill –
supplementary submission

13/6/2023

Land Transport (Road Safety) Amendment Bill

1 Introduction

1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to make a supplementary submission on the Land Transport (Road Safety) Amendment Bill (the **Bill**). This addresses the issue of whether the proposed s 96AAB has the potential to impinge upon a person's right to silence, which arose during our oral submission on 8 June 2023.

2 Right to silence and privilege against self-incrimination

2.1 This section of the Bill authorises the seizure and impoundment of a vehicle if the driver contravenes s 114(3)(b) of the Land Transport Act 1998 (the **LTA**), or if the owner or hirer of the vehicle contravenes s 118(4) of the LTA. The committee's question focussed on where an information request is made under s 118(4) following a Police chase.

2.2 Section 23 of the New Zealand Bill of Rights Act 1990 (the **Bill of Rights**) provides for rights of persons arrested or detained. It states that "everyone who is arrested or detained... shall have the right to refrain from making any statement and to be informed of that right".¹

2.3 Section 118 of the LTA provides the ability for Police to obtain information about a suspected offence from an owner of the vehicle in question. Whether the owner's right to silence is engaged in this situation depends on the circumstances in which this request is made:

(a) If the owner of the vehicle has been arrested or detained in relation to the suspected failing to stop offence, Police are not permitted to require them to provide information about the driver due to s 118(5), which preserves the owner's right to silence.

(b) If the person is not detained or arrested, s 23 of the Bill of Rights is not engaged. We note that the LTA does not provide a specific power for Police to detain an owner for the purposes of making a request under s 118(4), so this situation will likely apply in most cases where Police request information under this section.

2.4 While the right to silence would not be engaged in the latter situation, in the event the owner of the vehicle was the driver who failed to stop they may be able to use the privilege against self-incrimination provided by s 60 of the Evidence Act 2006. Under that section, a person can refuse to provide information to Police if that was likely to incriminate them in relation to an offence punishable by a fine or imprisonment.²

2.5 While this section may protect an individual from incriminating themselves, in practice this requires that the owner of the vehicle know about the availability of this privilege in advance – as opposed to the right to silence, s 60 does not place an obligation on Police to inform an owner of the existence of this privilege.

¹ New Zealand Bill of Rights Act 1990, s 23(4).

² We note that s 60(3) provides that the privilege against self-incrimination can be removed by other enactments, either expressly or by implication. We are not aware of any caselaw that has determined whether s 118(5) has removed the privilege by necessary implication.

- 2.6 Under the proposed new s 96AAB(2), an officer can seize and impound a vehicle if they believe on reasonable grounds that an owner or hirer of a vehicle has, without reasonable excuse, failed or refused to provide information, or provided false information in response to a request under s 118(4). In the event an owner advised Police that they were refusing to provide information due to it being privileged, we would expect that would be regarded as a reasonable excuse (though there is clearly the potential for that to be the subject of litigation). However as we noted in our initial submission, s 96(1AB) would already allow for the impoundment of this vehicle in these circumstances.
- 2.7 Neither the right to silence nor self-incrimination privilege is likely to be engaged in a situation where the owner of the vehicle refuses to provide information in order to protect the identity of a third party who was driving the vehicle at the time of the offence (for example, where a family member or associate of the owner has failed to stop when required). In such situations, the owner would generally be required to provide information about the driver to Police.³ A failure to do so may then result in impoundment under the proposed s 96AAB.
- 2.8 For completeness, we note that while the proposed s 96AAB can be seen as a threat of adverse consequences to force compliance with a s 118(4) request, this would not be a novel approach under the LTA. Section 52(6) already makes it a criminal offence to fail or refuse to provide information, or provide false information, in response to a request under s 118 and is similarly targeted towards compelling compliance.



Paul Rishworth KC
Convenor
Human Rights and Privacy Committee

³ One exception to this would be a situation where the owner was arrested or detained for a reason unrelated to a failure to stop incident. Police would not be prohibited by s 118(5) of the LTA from making a request for information (as the owner would not be “arrested or detained in relation to the suspected offence”). However, as the owner would be detained/arrested, their right to silence under the Bill of Rights would be engaged.