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# Antisocial Road Use Legislation Amendment Bill 2025

## Submissions on behalf of The Law Association of New Zealand by the Criminal Law Committee

## INTRODUCTION

The Law Association of New Zealand (TLANZ) is an independent membership organisation for the New Zealand legal profession with more than 8,000 members. TLANZ maintains expert law committees that support legal review and policy advocacy on important issues.

This submission is made on behalf of the Criminal Law Committee (the Committee), which is comprised of practitioners with extensive expertise across the criminal justice system. Members of the Committee work daily at the coalface of criminal law – in the courts, with defendants, victims, police, and other justice stakeholders – and are therefore uniquely positioned to comment on the practical and constitutional implications of criminal legislation.

The Committee welcomes the opportunity to provide submissions on the Antisocial Road Use Legislation Amendment Bill ("the Bill"). While we acknowledge the Bill's objective of improving road and community safety, we have serious concerns about whether the proposed reforms are consistent with the New Zealand Bill of Rights Act 1990, proportionate to the issues identified, and workable in practice.

## EXECUTIVE SUMMARY

1. The Bill pursues a legitimate objective – improving road and community safety – but several provisions are overbroad, disproportionate, and inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). In particular, the Bill's presumptive vehicle forfeiture and destruction on a first offence, broad closure powers over public spaces, compelled identification duties on registered persons, and elevated infringement / noise penalties raise significant concerns under ss 9, 14, 16–19, 21 and 25 of the NZBORA, and engage comparable obligations under the ICCPR (esp. Articles 14, 19, 21, 22, 26).

2. The Ministry of Transport's Regulatory Impact Statement (RIS) acknowledges a limited evidence base: constrained consultation; uncertainty about the prevalence of convoy behaviour; no specific Police data on "siren battles"; untested operational dependencies (e.g., noise devices); and costings based on assumptions. In short, evidence for new criminal offences and mandatory penalties is weak. The RIS simultaneously recognises disproportionate impacts on Māori (e.g., ~50% of those charged with fleeing Police in 2023), heightening s 19 NZBORA / CERD concerns.

3. Parliament should restore judicial discretion, tighten definitions, narrow police closure powers, add objective and procedural safeguards, insert workable defences (e.g., "reasonable steps" for registered persons), and require independent monitoring of disparate impacts. Absent these amendments, the Bill risks rights-inconsistency and may fail operationally, repeating the experience of earlier "crusher" legislation.

## SUBMISSIONS

4. **<u>The Bill at a glance (relevant clauses/provisions)</u>**

    4.1. New "frightening or intimidating convoy" offence (new s 39A LTA 1998), including the ability to charge both the convoy offence and the underlying driving offence, and attaching impoundment / forfeiture consequences.

    4.2. Compelled information duties on registered persons / hirers / licence-holders (new ss 118–118B LTA 1998), with offences and fines up to $20,000, and linkages to forfeiture.

4.3. Impoundment regime changes (standardising at 28 days; repeal of 6-month impoundment in s 96AAA; expanding powers to impound where information is withheld).

4.4. Presumptive forfeiture or forfeiture-and-destruction on a first offence for specified categories (new ss 142AAG–142AAN Sentencing Act 2002). Limited carve-outs (manifest injustice, extreme / undue hardship, or stolen vehicle).

4.5. Police power to close roads / "accessible places" and direct people to leave where antisocial road use is occurring or expected; $1,000 infringement / $3,000 court fine for non-compliance (new ss 35–35B Policing Act 2008).

4.6. Increased penalties for "excessive noise" under the Land Transport (Offences and Penalties) Regulations 1999 (to $300 infringement and $3,000 court).

5. **NZBORA Analysis**

5.1. **Presumptive forfeiture/ destruction on a first offence (Sentencing Act, new ss 142AAG–142AAN; Bill cl 36)**

5.1.1. *Effect:* Mandatory order to forfeit or forfeit and destroy the vehicle where the offender is within specified categories (aggravated fail-to-stop; failure to provide information; convoy offence; street racing / sustained loss of traction) and owns / has an interest or is the registered person at the time. Limited exceptions: manifest injustice, extreme hardship to the offender or undue hardship to others or stolen / converted vehicle in some categories.

5.1.2. *Rights engaged:*

- s 21 (unreasonable seizure / deprivation of property): destruction or permanent deprivation after a single event is an extreme remedy and is likely disproportionate, particularly where no injury/ minimal harm has occurred.
- s 25(e) (minimum rights – sentence by an independent and impartial court) & substantive fairness: a mandatory outcome with narrow escape valves unduly narrows judicial discretion, creating a real risk of gross disproportionality in individual cases.
- s 19 (discrimination): interacts with known disproportionate enforcement patterns (see RIS) and risks amplifying inequities.

5.1.3. *Proportionality:* The Government must show (a) a sufficiently important objective; (b) rational connection; (c) least-rights-impairing means; (d) balance of benefits and harm. Compulsory forfeiture / destruction – even where no injury occurred – is unlikely to be the least-impairing measure, given existing tools (impoundment, fines, disqualification, community-based interventions), and available targeted mechanisms (e.g., repeat-offender triggers with graduated responses).

5.1.4. *Recommendation 1:* Replace the presumption with discretionary orders guided by statutory proportionality factors, require explicit harm / risk findings, confine destruction to repeat, high-harm scenarios, and protect third-party / secured interests with an opt-out as of right. Add a sunset and post-implementation review.

5.2. **Police closure powers and dispersal (Policing Act, new ss 35–35B; Bill cls 42–44)**

5.2.1. *Effect:* Police may temporarily close roads and "accessible places" (incl. areas used by the public for vehicle access even if privately owned), if antisocial road use

is occurring or may reasonably be expected; may direct persons to leave / not enter; non-compliance is an infringement ($1,000) or fine ($3,000).

5.2.2. *Rights engaged:*

- s 16 – 18 (peaceful assembly, association, movement).
- s 14 (expression), where gatherings involve expressive activity (music, processions).
- s 21 (seizure / exclusion from public places) in the sense of compulsory dispersal.

5.2.3. *Overbreadth / vagueness:* Threshold "may reasonably be expected" is low and predictive, creating latitude to disperse lawful events (e.g., cultural processions, car-club meets) and penalise bystanders who do not promptly leave. The power extends to private carparks / forecourts used by the public, increasing arbitrariness risks.

5.2.4. *Recommendation 2:*

- Raise the threshold to "reasonable grounds to believe an offence is occurring or imminent and that closure is necessary and proportionate to prevent specific, identifiable harms";
- require written reasons, time / area limits, senior-officer authorisation, statistical reporting, and independent audit of use;
- exempt lawful events; and
- add a statutory proportionality test and an immediate review mechanism.

5.3. **Compelled identification of drivers / passengers; offences for non-compliance (LTA, new ss 118–118B; Bill cl 20; related offences in cl 12)**

5.3.1. *Effect:* Registered persons / hirers must immediately (s 118) or within 14 days (ss 118A–118B) provide information leading to identification / apprehension of drivers / passengers; offences for non-compliance attract fines up to $20,000; related non-compliance can trigger impoundment and sits inside the forfeiture framework (new s 142AAH captures "failing to provide information offender").

5.3.2. *Rights engaged:*

- s 25(c) (right not to be compelled to confess guilt): where the registered person is the driver, these provisions function as compelled self-incrimination.
- s 25(d) (adequate time and facilities): immediate provision (s 118) is onerous and may be impracticable, risking unfairness.
- s 27(1) (natural justice): exposure to severe consequences (including forfeiture) for failure to identify when it may be genuinely unknown (parents, employers, clubs).

5.3.3. *Recommendation 3:* Insert a statutory "reasonable steps" defence; exclude self-incrimination (i.e., no requirement to identify oneself as the driver); restrict forfeiture exposure to intentional obstruction proven beyond reasonable doubt; and align response with graduated civil penalties rather than criminal consequences.

5.4. **Noise, infringement escalation, and fairness (Bill cl 48; cls 41–44)**

5.4.1. *Effect:* Excessive noise penalties rise to $300 infringement / $3,000 court; infringement regime enables swift ticketing for dispersal-order non-compliance.

5.4.2. *Rights / fairness:*

- s 14 (expression): amplified music is expressive; restriction must be precise and objective. "Excessive" is subjective absent decibel standards, risking arbitrary enforcement.
- s 25(b) (adequate time / facilities) and access to justice: RIS flags a likely debt pipeline for low-income offenders (unpaid fees → court escalation). This regressive impact engages s 19 concerns.

5.4.3. *Recommendation 4:* Adopt objective acoustic thresholds (time-of-day / location-specific), graduated warnings, enable on-the-spot remediation (cease-and-desist order before ticketing), and require ability-to-pay and alternative dispositions (e.g., community-based interventions) at infringement / court stage.

5.5. **Discriminatory impacts and systemic oversight (s 19 NZBORA; CERD)**

5.5.1. The RIS records disproportionate impact (e.g., Māori ≈ 50% of "fleeing Police" charges in 2023). Mandatory penalties and broad discretion (closures; stop / identify) risk amplifying existing bias. Without mitigation, s 19 and CERD obligations are implicated.

5.5.2. *Recommendation 5:*

- A statutory duty on Police and MoT to collect / publish disaggregated data (ethnicity, age, gender, location, offence type, use of closure powers, impoundments, forfeiture orders, outcomes).
- Annual independent review (IPCA + independent academic partner) with public reporting to the Committee.
- Sunset clause (3 years) with mandatory post-implementation rights impact assessment.

## 6. <u>Clause-by-Clause Concerns</u>

### 6.1. Clause 10 – Intimidating Convoy Offence

6.1.1. *What it does:* Creates a new offence for being part of a "frightening or intimidating convoy." Two cars are enough to count as a convoy, and people can be charged with this as well as the underlying driving offence. The penalty can include losing or destroying the car.

6.1.2. *Concerns:*

- The definition is too broad – it could capture cultural processions (like tangihanga) or sports parades.
- Even vehicles unintentionally travelling near a convoy could be swept in.
- Harsh penalties are attached even though the Government's own Regulatory Impact Statement (RIS) admits data on convoys is very limited.

6.1.3. *Suggested fix:* Limit "convoy" to 3 or more cars acting together with intent to intimidate, exclude cultural or authorised events, and prevent "double charging".

6.2. **Clauses 12 & 20 – Duty to Provide Information**

6.2.1. *What it does:* Expands the law so registered owners, hirers, or licence holders must identify who was driving or a passenger, sometimes immediately. Failure can mean fines up to $20,000 and vehicle forfeiture.

6.2.2. *Concerns:*

- Parents, employers, or lessors may not realistically know who was driving.
- It risks forcing someone to incriminate themselves if they were the driver.
- Harsh penalties without a "reasonable steps" defence are unfair.

6.2.3. *Suggested fix:* Add a reasonable steps defence; remove any duty to identify yourself; separate minor failures to comply from serious, deliberate obstruction.

6.3. **Clauses 14–19 – Impoundment Rules**

6.3.1. *What it does:* Standardises impoundment at 28 days (instead of 6 months) and widens police powers to impound if someone won't provide driver details.

6.3.2. *Concerns:*

- 28-day consistency is sensible, but widening impoundment powers without clear limits risks over-use.
- Innocent third parties (like employers or family) may lose access to a vehicle without proper appeal rights.

6.3.3. *Suggested fix:* Require police to show impoundment is necessary and proportionate and strengthen appeal rights.

6.4. **Clause 36 – Presumptive Forfeiture and Destruction**

6.4.1. *What it does:* Requires courts to order forfeiture (or forfeiture and destruction) of a vehicle for certain offences, including first offences.

6.4.2. *Concerns:*

- Mandatory destruction removes judicial discretion and may be disproportionate.
- Serious property rights concerns under s 21 NZBORA.
- Risks punishing third parties with a financial interest in the vehicle (family, finance company).

6.4.3. *Suggested fix:* Make forfeiture discretionary, only after the court weighs seriousness, history, harm caused, and other penalties. Limit destruction to repeat, high-harm offending.

6.5. **Clauses 42–44 – Police Closure and Infringement Powers**

6.5.1. *What it does:* Lets police close roads or "accessible places" (like public carparks) where antisocial road use is happening or may reasonably be expected. Police can order people to leave, and failure to comply can cost $1,000–$3,000.

6.5.2. *Concerns:*

- Threshold is too low ("may reasonably be expected") – allows action based on predictions.
- Could shut down lawful gatherings or penalise innocent bystanders.
- Infringes freedoms of movement and assembly under NZBORA.

6.5.3. *Suggested fix:* Require higher threshold (actual or imminent offending), written reasons, senior officer approval, clear time limits, and carve-outs for lawful events.

6.6. **Clause 48 – Noise Penalties**

6.6.1. *What it does:* Increases penalties for "excessive noise" from $50 to $300 (infringement) and from $1,000 to $3,000 (court).

6.6.2. *Concerns:*

- "Excessive" is subjective – without decibel standards, enforcement could be inconsistent or arbitrary.
- RIS admits Police have no specific data on "siren battles".
- Higher fines risk creating debt traps for low-income people, escalating into court.

6.6.3. *Suggested fix:* Use objective noise standards (decibels, time/place), require warnings first, and allow community-based alternatives instead of high fines.

7. **<u>Why the Bill will underperform operationally</u>**

7.1. *Deterrence limits:* Escalating penalties and asset destruction do not reliably deter impulsive, status-or community-driven behaviours.

7.2. *Ownership complexity:* Vehicles are commonly owned / financed / registered to third parties; forfeiture will trigger litigation and appeals, delaying outcomes and consuming court time (the Bill anticipates third-party appeals but they will be frequent).

7.3. *Resource dependency:* The Bill leans on front-line capacity (closure operations; evidence gathering; identification demands). Without resourcing uplift, utilisation will be patchy.

8. **<u>Drafting – illustrative amendments (in principle)</u>**

8.1. *Sentencing Act: new s 142AAH(2):* replace "must order" with "may order" and add proportionality factors; move "destruction" to a separate, repeat-offender section with elevated threshold.

8.2. *Policing Act: new s 35A:* substitute "may reasonably be expected" with "has reasonable grounds to believe is imminent"; require written reasons, time limit, area minimisation, senior authorisation, protected-assembly carve-out, and publication / annual statistics.

8.3. *LTA: new ss 118–118B:* add reasonable-steps and cannot-reasonably-ascertain defences; exclude self-identification duty; reserve forfeiture exposure to intentional obstruction proved beyond reasonable doubt.

8.4. *Noise penalties:* incorporate objective acoustic standards, a warning first rule, and equity-sensitive enforcement (payment plans, community options).

**CONCLUSION**

The Committee recommends amendments to align the Bill with NZBORA and international obligations, enhance operational efficacy, and avoid disproportionate or discriminatory impacts. Specifically:

- Restore judicial discretion and reserve vehicle destruction for repeat, high-harm cases;
- Narrow and safeguard Police closure powers;
- Insert fair defences and remove self-incrimination risks in identification duties;
- Adopt objective standards for noise and equity-sensitive infringement design; and
- Mandate independent data collection, oversight, and a sunset clause with review.

With these changes, Parliament can target genuinely harmful behaviours while upholding rights and improving public safety.

We also wish to emphasise that the Committee welcomes the opportunity to engage further with Parliament and officials on this Bill. We recognise that, in matters such as these, there is a shared intention across all parties to improve the safety and integrity of our system. At the same time, it is essential that any reforms are workable in practice and consistent with fundamental rights.

As lawyers who operate at the coalface of the criminal justice system on a daily basis, we are uniquely positioned to highlight where legislative changes may have unintended effects, and to offer practical, evidence-based recommendations to ensure new laws both deter harmful conduct and withstand constitutional scrutiny.

Thank you for the opportunity to make submissions in respect of the Antisocial Road Use Legislation Amendment Bill 2025.

We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Gandhya Senanayake, the TLANZ Committee Executive at gandhya.senanayake@tlanz.nz.

Ngā mihi

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*The views represented in this submission are not necessarily representative of the views of all TLANZ members but are those of individual TLANZ members or TLANZ committees who have responded to the consultation.*