

# SUSPENSION AND IMPOUNDMENT

**THIS ISSUE OF TRUCKERS' GUIDE TO THE LAW FOCUSES ON TWO ASPECTS OF THE LAND TRANSPORT ACT 1998: THE IMMEDIATE SUSPENSION OF DRIVER LICENCES, AND THE IMPOUNDMENT OF VEHICLES.**

## Introduction

One of the main objectives of the Land Transport Act 1998 is to promote safer road user behaviour. In order to achieve this, the Act provides severe penalties for a number of driving offences.

The police also have certain powers, in some circumstances, including the power to immediately suspend a person's driver's licence and to immediately seize and impound motor vehicles.

The New Zealand Transport Agency (NZTA) also has powers to immediately suspend some drivers in the interests of public safety.

The mandatory suspension of driver's licences and the mandatory impoundment of vehicles are penalties that are additional to any other penalty the person would face upon conviction for an alleged offence. In fact, the police do not have to charge anyone with any offence. Suspension and impoundment are immediate penalties imposed without reference to the courts.

## Driver Licence Suspension

An enforcement officer must suspend a driver's licence for 28 days if they believe on reasonable grounds that the person:

- has a breath alcohol concentration exceeding 650 micrograms;
- has a blood alcohol concentration exceeding 130 milligrams; or
- exceeds the breath or blood alcohol level and has, within the last 4 years, been convicted of one of the following offences:
  - driving with an excess breath or blood alcohol level;
  - driving while under the influence of drink or a drug to such extent as being incapable of having proper control of the vehicle;
  - driving with blood that contains evidence of the use of certain drugs;
  - failing or refusing to permit a blood specimen to be taken;
  - failing or refusing to undergo a compulsory impairment test;
  - causing injury or death while in charge of a motor vehicle with an excess breath or blood alcohol level or while under the influence of drink or a specified drug, or where the person does not complete a compulsory impairment test when required and the person's blood contains evidence of the use of a specified drug.
- has failed or refused to undergo a blood test after having been required or requested to do so; or

- has exceeded a permanent posted speed limit by more than 40km an hour or any other speed limit by more than 50km an hour (in either case where the speed was detected other than by approved surveillance equipment).

In any of these situations, the enforcement officer must give the driver a notice of suspension. The notice of suspension must:

- be in the prescribed form;
- tell the driver that his or her licence is suspended for 28 days;
- require the person to immediately surrender their licence to the officer; and
- outline the person's rights to appeal against the suspension.

Any person driving whilst on this suspension will be charged with driving while suspended.

The maximum penalty for driving while suspended is 3 months' imprisonment or a fine of up to \$4,500. The Court must also disqualify you from driving for at least 6 months.

If you have two or more previous convictions for driving while suspended or disqualified, or contrary to the terms of an alcohol interlock, zero alcohol or limited licence, the maximum penalty is 2 years' imprisonment or a fine of up to \$6,000. The Court must also disqualify you from driving for one year or more.

## Immediate Suspension of Transport Service Drivers and Other Persons

NZTA can immediately suspend a person from driving in a transport service (other than a rental service), or from being a driving instructor or testing officer if certain circumstances apply.

Those circumstances are:

- NZTA considers that:
  - the person is not a fit and proper person; and
  - the interests of public safety, or the need to ensure the public is protected from serious or organised criminal activity would seem to require immediate suspension; or
- the person has been charged with any offence that is of such a nature that the interests of public safety, or the need to protect the public from serious or organised criminal activity would require that a person convicted of such an offence not be a transport service driver, or driving instructor, or testing officer, as the case may be.

If NZTA suspends a person using the powers set out above, it must inform the person of the grounds of the suspension, and advise the person that:

- the suspension has effect from the day on which the notice was received by the person, or any later date that is specified in the notice;
- the person may make submissions on the matter to NZTA; and
- the person has a right of appeal.

NZTA can withdraw a suspension imposed using the powers above at any time. If any suspension has been imposed in respect of a person who is facing charges, the suspension ceases immediately if:

- the charge is withdrawn in circumstances where it is not replaced with another charge based on the same circumstances; or
- the person is found not guilty of the offence charged.

## Mandatory Impoundment of Vehicles

An enforcement officer must seize and impound (or seize and authorise the impoundment of) a motor vehicle for 28 days if they believe on reasonable grounds that a person drove the vehicle on a road:

- while disqualified from driving;
- while the person's drivers licence was suspended or revoked;
- contrary to the provisions of an alcohol interlock licence;
- having previously been forbidden to drive because they were an unlicensed driver or because they had an expired driver's licence.

The vehicle must also be impounded if the

driver had an excess breath or blood alcohol level, or failed or refused to undergo a blood test after having been required or requested to do so, and has been convicted of 2 or more of the following offences in the last 4 years:

- driving with an excess breath or blood alcohol level;
- driving in breach of the breath or blood alcohol limits applicable to drivers under 20 years;
- driving with breath or blood alcohol in excess of the limit by the holder of an alcohol interlock licence or a zero alcohol licence;
- failing a compulsory impairment test and the person's blood contains evidence of the use of a specified drug;
- driving while under the influence of drink or a drug to such extent as being incapable of having proper control of the vehicle;
- driving with blood that contains evidence of the use of certain drugs;
- has failed or refused to undergo a blood test after having been required or requested to do so;
- failing or refusing to undergo a compulsory impairment test;
- causing injury or death while in charge of a motor vehicle with an excess breath or blood alcohol level or while under the influence of drink or a specified drug, or where the person does not complete a compulsory impairment test when required and the person's blood contains evidence of the use of a specified drug.

A vehicle must also be impounded if an enforcement officer believes on reasonable grounds that the vehicle was in a race, or in an unnecessary exhibition of speed or acceleration or if, without reasonable excuse, a person caused the vehicle to undergo sustained loss of traction.

An officer may seize and impound a vehicle if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop as signalled, requested or required.

An officer may also seize and impound a vehicle for up to 7 days in relation to certain other offences relating to breach of bylaws while subject to a warning notice.

An officer who seizes and impounds a vehicle must complete a notice in the prescribed form, setting out:

- the name and address of the driver;
- the year and make of the vehicle and its registration plate details;
- the date and time of the alleged offence;

- the date and time of the seizure;
- the place where the vehicle is to be impounded; and
- an outline of the person's rights of appeal.

A copy of the notice must be given to the driver, unless the driver has left the scene, and also to the registered owner of the vehicle and the person who will be storing the vehicle.

Any personal property present in the motor vehicle at the time of seizure and impoundment (other than property attached to or used in connection with the operation of the vehicle) must be released on request to a person who produces satisfactory evidence that he or she is lawfully entitled to the property.

## Impoundment of Transport Service Vehicles

An enforcement officer must seize and impound a motor vehicle that is being used in a transport service for 28 days if the officer believes on reasonable grounds that a person drove the vehicle on a road while:

- the transport service operator was disqualified from holding or obtaining a transport service licence;
- the transport service operator's transport service licence was suspended or revoked; or
- the transport service operator did not hold a transport service licence and had previously been forbidden to operate a transport service.

An enforcement officer who seizes and impounds a transport service vehicle must complete a notice in the prescribed form acknowledging the seizure and impoundment and setting out:

- the name and address of the driver;
- the name and address of the transport service operator (if different from the driver);
- the year of manufacture and make of the vehicle and its registration plate details;
- the date and time of seizure, the place where the vehicle is to be impounded; and
- an outline of the person's rights of appeal.

A copy of the notice must be given to the driver, unless the driver has left the scene, to the registered owner of the vehicle and to the storage provider who stores the motor vehicle. As in the case of impoundment of non-transport service vehicles, any personal property present in vehicle at the time of

seizure and impoundment (other than property attached to or used in connection with the operation of the vehicle) must be released on request to a person who produces satisfactory evidence that he or she is lawfully entitled to the property.

## Release of Impounded Vehicles

An impounded vehicle may be released before the close of the 28 day impoundment period if the vehicle was impounded from an unlicensed driver, and that person has paid the fees for towage and storage of the vehicle and has produced their current driver's licence.

If the vehicle is not released earlier, the registered owner is entitled to uplift the vehicle from storage on or after 28 days of impoundment.

The owner has to produce proof of their identity and either proof of ownership of the vehicle or the owner's copy of the notice of seizure and impoundment issued by the police. The owner must also pay the fees and charges for towage and storage of the vehicle before they are entitled to have the vehicle released to them.

If a further 10 days has elapsed (making a total of 38 days since the seizure and impoundment of the vehicle), and the owner or any other authorised person has not claimed the vehicle and paid the charges, then the storage provider may apply for approval to dispose of the vehicle and any personal property found in the vehicle. Once approved, the storage provider becomes the owner of the vehicle.

## Rights of appeal

There are rights of appeal against both the suspension of a person's driver's licence and against the seizure and impoundment of a vehicle.

### Roadside Driver Licence Suspension

A person who has had their driver's licence suspended has a right of appeal by way of statutory declaration to NZTA. NZTA has five working days to consider an appeal. There is then a further right of appeal to the District Court, but it is unlikely that the court will be able to hear the appeal before the licence is returned after 28 days.

There are three grounds for appealing against the immediate suspension of your licence. They are:

1. the person whose licence was suspended was not the driver of the vehicle at the time of the offence;
2. the police officer concerned did not have reasonable grounds for believing the driver was not entitled to drive; or
3. the notice of suspension does not

comply with the Land Transport Act.

### Vehicle Impoundment

The owner of an impounded vehicle has a right of appeal to the police by way of statutory declaration.

An appeal must be lodged no later than 14 days after the date on which the vehicle is seized and impounded. The police have between two and five working days to consider the appeal, depending on the grounds.

As with roadside driver licence suspensions, there is a further right of appeal to the District Court, but again it is unlikely that the court will be able to hear the appeal before the vehicle is returned after 28 days.

An owner of a motor vehicle which has been seized can appeal to the police for their vehicle to be returned to them on the following grounds:

- that the impounded vehicle was a stolen or a converted vehicle at the time of the seizure and impoundment;
- the enforcement officer who seized the vehicle did not have reasonable grounds for impounding the vehicle;
- the notice of impoundment does not comply with the Land Transport Act;
- the owner of the vehicle did not know and could not reasonably be expected to have known that the driver of the vehicle at the time of seizure was not permitted to drive;
- the owner did everything he or she could to prevent the driver from driving the vehicle;
- the driver drove in a serious medical emergency;
- the owner did not know, and could not reasonably have been expected to know, that the driver would operate the vehicle in a race, in an unnecessary exhibition of speed or acceleration, in a manner that caused the vehicle to undergo sustained loss of traction, in breach of a bylaw, or fail to stop when signaled, requested or required to do so; or
- the owner took all reasonable steps to prevent the driver from operating the vehicle as above.

An owner of a motor vehicle in a transport service can appeal to have their vehicle returned to them on the grounds that the owner did not know, or could not reasonably have been expected to know, that the operator of the transport service in which the vehicle was being used:

- was disqualified from holding a transport service licence;
- had the relevant transport service licence suspended or revoked; or

- did not hold a transport service licence and had previously been forbidden to operate a transport service.

This summary is intended only as a guide. It is not a full summary of the driver licence suspension and vehicle impoundment provisions of the Land Transport Act 1998.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

Cathy Fisher

[cathy.fisher@fortunemanning.co.nz](mailto:cathy.fisher@fortunemanning.co.nz)

Shafraz Khan

[shafraz.khan@fortunemanning.co.nz](mailto:shafraz.khan@fortunemanning.co.nz)

[www.fortunemanning.co.nz](http://www.fortunemanning.co.nz)

0800 4 FM LAW

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lawyers