

Chapter 25 Creating infringement offences

Infringement offences are a subset of criminal offences that do not result in criminal convictions. They usually involve low-level infringement fees (less than \$1,000) and are often imposed by the issuing of an infringement notice (such as the Police issuing a fine for an unwarranted motor vehicle or issuing a speed camera fine). The purpose of infringement offences is to deter conduct that is of relatively low seriousness and that does not justify the full imposition of the criminal law. Infringement offences prevent the courts from being overburdened with a high volume of relatively straightforward and low-level offences. Without them, the law may otherwise not be enforced because it is unlikely a prosecution would be in the public interest. The criminal courts will generally become involved only if the infringement fee is not paid or if the recipient of the infringement notice challenges it.

New Zealand law contains a number of infringement provisions that impose penalties in excess of \$1,000. These provisions are exceptions to the general principles in this chapter and should not operate as precedents for new infringement offence regimes.

Guidelines

25.1 Is it appropriate to deal with the prohibited conduct as an infringement offence?

Infringement offences should be reserved for the prohibition of conduct that is of concern to the community, but which does not justify the imposition of a criminal conviction, significant fine, or imprisonment.

The Ministry of Justice has produced [guidelines](#), approved by Cabinet, on the development of infringement schemes, which departments should adhere to.⁵³

Infringement penalties may be appropriate if:

- the conduct represents a minor contravention of the law;
- large numbers of strict or absolute liability offences are committed in high volumes on a regular basis;
- the conduct involves straightforward issues of fact that can be easily identified by an enforcement officer;
- a fixed penalty can achieve a proportionate deterrent effect because contraventions of the particular prohibition are reasonably uniform in nature (if individual culpability can vary widely, the conduct is unlikely to be suitable to be dealt with by infringement offence); or
- identifying actual offenders is not practicable (for instance, in relation to parking, speed cameras, or toll road offences), but liability may be attributed to the person who has prima facie responsibility for the item used in the offending (such

⁵³ Ministry of Justice *Policy framework for new infringement schemes*.

as the owner of the vehicle that is found speeding or illegally parked).⁵⁴

Infringement penalties are generally not appropriate for mens rea offences, cases that involve complex factual situations, or conduct that may warrant more serious consequences (for example, more than a \$1,000 fee or a non-monetary penalty).

Any aspect of an offence that provides an incentive to a person issued with an infringement notice to challenge the matter in court (for example, a high fee or the potential to prove some matter to escape liability) defeats the purpose of the infringement regime to keep minor infringements of the criminal law out of court and therefore should be avoided.

It is generally undesirable to have identical conduct specified to be both an infringement offence and a separate criminal offence. Wherever possible, some differentiation as to mens rea or the specific type of conduct should exist between infringement offences and other offences in the same legislation. If a low-level fixed fee is considered insufficient to punish or deter the prohibited conduct, the conduct is likely to be too serious to be dealt with as an infringement offence.

25.2 Is there authority for the infringement regime?

Infringement offences must be in or authorised by an Act.

An infringement offence must either be specified in the Act or be clearly authorised by the Act. Secondary legislation may address some matters, but the Act must contain an appropriate empowering provision (see [Chapter 14](#)).

At a minimum, the Act must:

- establish the infringement offence scheme;
- establish the maximum penalty provisions;
- establish who can issue infringement notices; and
- identify the entitlements to revenue that prosecuting agencies receive from infringement fees.

The Act must specify whether the fee will be paid to the enforcement body or to the Crown Bank Account. Generally, infringement fees collected by central government agencies should be paid to the Crown Bank Account, but territorial and local authorities may be entitled to retain all or some of the revenue. If the fee is to be split, that must be provided for in the Act. Treasury advice should be sought on these matters.

It is standard practice for the Act to authorise details of the specific infringement regime to be provided for in secondary legislation, including:

⁵⁴ This is subject to the person issued with the infringement notice being able to raise his or her lack of involvement in the offending with the issuer and to challenge it in court.

- the specific act or omission constituting an infringement offence;
- the specific penalty levels for each infringement offence; and
- the form of the infringement notice and reminder notice to be issued.

In general, infringement fees should not exceed \$1,000, although, in cases with significant financial incentives for non-compliance, a higher fee may be justified to achieve the deterrent effect. If fees are to be set by secondary legislation, the empowering provision should specify the upper limit for the fees. Fees of more than \$1,000 should be stated in the Act. In some cases, the Act will need to specify a maximum fine for an infringement offence, as well as an infringement fee. This should be discussed with the Ministry of Justice if infringement offences are proposed.

25.3 What procedures apply to new infringement penalties?

Section 21 of the Summary Proceedings Act 1957 should apply to all new infringement offences.

Section 21 of the [Summary Proceedings Act 1957](#) sets out a generic process by which a person may challenge an infringement notice. It also provides a process by which an agency may issue reminder notices, enter into instalment arrangements, and, if necessary, bring a person before the court and have an unpaid infringement penalty converted to a fine plus the associated court costs.

New infringement penalties should use this existing system to ensure consistency with the infringement regime systems and to reduce complexity in the law. Cogent reasons are required to justify any departure from the Summary Proceedings Act procedure.

For section 21 of the Summary Proceedings Act 1957 to apply, legislation should contain an express provision to the effect that the new offence is an infringement offence for the purposes of section 21 of the Summary Proceedings Act 1957. Ideally, the infringement regime should also be included in the list of regimes in section 2 of the Summary Proceedings Act 1957 under the definition of “infringement notice”.