

22. 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. As a result, the criminal courts will generally only become involved 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.

Before undertaking detailed work designing an infringement offence, the four preliminary questions identified in Chapter 21 should be addressed: What conduct is to be prohibited? When should a person be held responsible? What defences are available? Who should be punished?

Guidelines

22.1. Should the conduct be subject to an infringement offence?

Infringement offences should be reserved for matters regarded as being of concern to the community and should be prohibited, but do not justify the imposition of a criminal conviction, significant fine, or imprisonment.

The recent development of infringement offence regimes has been inconsistent. The Ministry of Justice has produced guidelines, approved by Cabinet, on the development of infringement schemes which departments should adhere to.¹³⁹

Infringement penalties may be appropriate when:

- large numbers of strict 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 “one size fits all” approach to penalising conduct can achieve a proportionate deterrent effect;
- identifying actual offenders is not practical (for instance, in relation to parking, speed cameras or toll road offences), but liability may be attributed to the person most able to exercise control of the offending (such as the owner of the vehicle that is found speeding or illegally parked).

¹³⁹ <http://www.justice.govt.nz/publications/global-publications/i/infringement-guidelines>

Infringement penalties will not generally be appropriate in cases that involve complex factual situations, offences that require a mental element, offences that require significant fines (more than \$1,000), or offences that the community considers would warrant a sentence of imprisonment.

Although called an “offence”, no conviction results if the infringement fee is paid.

22.2. Is there authority for the infringement regime?

Infringement offences must be authorised by primary legislation.

The power to specify an offence as an infringement offence must come from primary legislation. Delegated legislation may address some matters, but primary legislation must contain an appropriate empowering provision (see Chapter 13). To ensure consistency between new infringement regimes, and to ensure those regimes can operate effectively, the matters set out below should be addressed.

Authorising and defining the offence—primary legislation

- The prohibited conduct must be precisely defined.
- Can the prohibited conduct be proceeded against by standard criminal proceedings or not? In those cases where the same conduct may be of such seriousness that it warrants criminal sanctions, primary legislation must specify a separate criminal offence.
- Who has the authority to issue an infringement notice? Is it the police, inspectors from the Ministry for Primary Industries or other enforcement bodies or officers?
- In what circumstances may an enforcement officer issue an infringement notice? For example, must the officer observe the prohibited conduct or can they have reasonable cause to believe that the prohibited conduct took place?
- Will the penalty apply to the Crown?

Setting the maximum penalty that may be imposed—primary or delegated legislation

- In general the penalty should not exceed \$1,000, although, in cases with significant financial incentives to non-compliance, a higher level of penalty may be justified to achieve the deterrent effect. Penalties of more than \$1,000 should be stated in primary legislation. In some cases infringement fees of less than \$1,000 may be set by delegated legislation.

Operational aspects—primary or delegated legislation

- The precise form of the infringement notice may be specified in delegated legislation, but the basic requirements should be set out in primary legislation. All infringement notices should include a statement that advises the recipient of their right to challenge the infringement notice.

- To whom will the infringement fee be paid? Legislation must specify whether the fee will be paid to the enforcement body or to the general Crown Bank Account. If the fee is to be split, this must be provided for in the legislation.
- Special procedures (for example, to allow the deferral of payment, payment by instalments, or cancellation of a notice following remedial action) should be authorised in primary legislation, although delegated legislation may cover the detail.

Enforcement and challenges—primary legislation

- Procedures that are available to challenge and enforce an infringement notice should be addressed in primary legislation (see below).

22.3. 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 1957¹⁴⁰ 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. This is to ensure consistency across 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 s 21 of the Act to apply, legislation should contain an express provision to the effect that the new offence is an infringement offence for the purposes of s 21 of the Summary Proceedings Act 1957.

¹⁴⁰ <http://www.legislation.govt.nz/act/public/1957/0087/latest/DLM310743.html>