

**In Confidence**

Office of the Minister for COVID-19 Response  
Cabinet Legislation Committee

**COVID-19 Public Health Response (Infringement Offences) Regulations 2021**

**COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2021**

**Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 (the regulations) and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2021 (the commencement order).

**Policy**

- 2 The COVID-19 Public Health Response Amendment Act (No 2) 2021 (the Act) comes into force on 20 November and, amongst other things, increases the maximum fees and fines for infringement offence breaches as follows:

**Table One: infringement offence maximum penalties**

	Prior penalty	New penalty
Maximum infringement fee for individuals	\$300	\$4,000
Maximum court-imposed fine for individuals (for an infringement offence)	\$1,000	\$12,000
Maximum infringement fee for body corporates	\$300	\$12,000
Maximum court-imposed fine for body corporates (for an infringement offence)	\$1,000	\$15,000

- 3 When approving the Bill for introduction to the House of Representatives, Cabinet Business Committee authorised me, as Minister for COVID-19 Response, to make policy decisions for the drafting of regulations under section 33(1)(a) and (b) of the Act to prescribe penalties for infringement offences or classes of infringement offences up to the maximum amounts prescribed in the Act [CBC-21-MIN-0102 refers].
- 4 In making the policy decisions and recommending the regulations, I have considered the following matters as required by section 33(1A) of the Act:

- 4.1 the severity and impact of the breaches specified as infringement offences or classes of infringement offences; and
  - 4.2 the appropriateness of the penalty for any group likely to be affected, including equity considerations; and
  - 4.3 comparable penalties under other legislation.
- 5 In making policy decisions, I approved the following three infringement classes to be included in the regulations (noting that some of the precise wording in the regulations has changed as a consequence of drafting):

**Table Two: Infringement offence classes and corresponding penalties**

Infringement offence class	Description	Prescribed infringement fee		Maximum court-imposed fine	
		Individual	Any other person <sup>1</sup>	Individual	Any other person
Low risk	For infringement offences where a breach is administrative or the worst potential outcome of that breach has a low likelihood of transmission and spread of COVID-19.	\$500	\$1,500	\$1,500	\$4,500
Medium risk	The risk of transmitting or spreading COVID-19 as a result of breaching an infringement offence in this class is not immediate, however the worst potential outcome of that breach has a possibility of transmitting or spreading COVID-19 or limiting the capability of the public health response.	\$1,000	\$4,000	\$4,000	\$12,000
High risk	The risk of transmitting or spreading COVID-19 as a result of breaching an infringement offence in this class is probable, i.e. the risk is not managed <sup>2</sup> .	\$4,000	\$12,000	\$12,000	\$15,000

- 6 An example of each class of infringement offence could include:
- 6.1 Low risk: if a person breaches the new requirement to provide contact details for MIQ charges.
  - 6.2 Medium risk: if a port company breaches the requirement to display visible isolation and quarantine signage immediately adjacent to every point of egress between the ship and shore.

<sup>1</sup> For example, Persons Conducting A Business or Undertaking and bodies corporate.

<sup>2</sup> The risk of transmission or spread of COVID-19 as a result of the breach.

- 6.3 High risk: if a person breaches the requirement to stay at home except for permitted personal movement, which could include crossing an alert level boundary.
- 7 I have approved the following classes and corresponding penalties to infringement offences contained in primary legislation:
- 7.1 Section 32P(1) (the requirement to remain in the assigned place of isolation or quarantine): High risk.
- 7.2 Section 32P(2) (the requirement to comply with direction or conditions imposed by the chief executive): High risk.
- 7.3 Section 32T(1) (the requirement to provide contact information): Low risk.
- 7.4 Section 32T(2) (the requirement to update contact details that change): Low risk.
- 8 Each infringement offence contained in COVID-19 orders and rules will also be assigned a class and corresponding penalties in the applicable legislative instrument. Immediately following approval of these regulations, I anticipate amending orders and rules that contain infringement offences to specify the infringement offence class for every infringement offence so that the corresponding penalties for that class applies. Officials have begun work applying the classes to existing infringement offences contained in orders.

### Timing and 28-day rule

- 9 Subject to commencement of the Act on 20 November 2021, I propose that the regulations and the commencement order come into force on 4 December 2021 subject to waiver of the 28-day rule and early notification in the *Gazette*.
- 10 The maximum fees and fines and the provisions in the Act related to infringement offences will be brought into force by the commencement order.
- 11 It is possible that waiver of the 28-day rule could give rise to comment from the Regulations Review Committee. However I consider this exemption to be justified on the basis that the increased fees and fines are necessary to deter increasing breaches of COVID-19 orders ahead of the holiday season and the transition to the COVID-19 Protection Framework throughout New Zealand.
- 12 Police observations indicate that compliance is wavering amongst community groups, individuals and businesses that would normally be compliant. Lockdown fatigue is increasing.
- 13 At 2 November 2021, 1,131 infringement notices were issued by New Zealand Police in Tāmaki Makaurau, Northland, and parts of the Waikato in the period since Alert Level 3 came into place on 21 September 2021.

- 14 It is therefore paramount that greater deterrents to breaching requirements are in place ahead of the planned movements of many New Zealanders characteristic of the Christmas holiday period.

## Compliance

- 15 The regulations comply with each of the following:
- 15.1 the principles of the Treaty of Waitangi;
  - 15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 15.3 the principles and guidelines set out in the Privacy Act 2020;
  - 15.4 relevant international standards and obligations;
  - 15.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee.

### The principles of the Treaty of Waitangi

- 16 Officials note that Māori and Pacific peoples are especially vulnerable to the harms caused by people who breach COVID-19 requirements and enforcement bias. The policy intent of the increased infringement fees and fines is to deter breaches of COVID-19 orders, in order to better protect vulnerable communities from the impact of those breaches.
- 17 To uphold the Te Tiriti o Waitangi principles of active protection and equity, discretion applied by enforcement officers to support compliance by maintaining the education-first approach is important alongside clear communication about what the requirements are and how people can get support to comply (e.g. financial support schemes to stay home from work).

### The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- 18 The passage of the COVID-19 Public Health Response Amendment Bill (No 2) 2021 considered NZBORA specific to increasing the maximum fees and fines in the Act. The report of the Attorney General under the NZBORA considered and determined the maximum fees were both a justified limitation on the presumption of innocence being strict liability offences, and proportionate as they are tied to an important public health objective.

### Principles and guidelines set out in the Privacy Act 2020

- 19 The Office of the Privacy Commissioner was consulted during policy development and identified no specific privacy considerations.

### Legislation Guidelines

- 20 The Legislation and Advisory Committee (LDAC) guidance was considered in setting the maximum penalty provisions in the Act. The guidance provides that, in general, infringement fees should not exceed \$1,000, and where they do, that it is preferable the fee is fixed in primary legislation.
- 21 The regulations do not exceed the maximum penalties for infringement offences in the Act and restrict use of the maximum fees to high-risk breaches only, where the risk of transmission or spread of COVID-19 as a result of breaching a requirement is probable.

### **Regulations Review Committee**

- 22 I consider that it may be possible there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327 due to the exemption sought to the 28-day rule. I consider this exemption to be justified for the reasons set out in paragraph 10.

### **Certification by Parliamentary Counsel**

- 23 The draft regulations and commencement order have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

### **Impact Analysis**

- 24 With my authorisation as Minister for COVID-19 Response to make policy decisions for the regulations, The Treasury advised that the Regulatory Impact Analysis (RIA) requirements were not triggered for these proposals.

### **Publicity**

- 25 Ministry of Health Officials are working with communications counterparts in the Department of Prime Minister and Cabinet (DPMC) and enforcement agencies to ensure the regulations are clearly articulated to support implementation.

### **Proactive release**

- 26 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982 and Cabinet Office agreement, no later than two working days following the Order in Council.

### **Consultation**

- 27 The following agencies have been consulted on the policy proposals, this paper and the regulations; The Ministries of Business, Innovation and Employment, Justice, Education, Foreign Affairs and Trade, Transport, Primary Industries, Social Development; the Ministries for Women and Pacific Peoples; Te Puni Kōkiri; Department of Internal Affairs; The Treasury; DPMC;

Office of the Privacy Commissioner; WorkSafe New Zealand; Crown Law Office; New Zealand Police; and New Zealand Customs Service.

- 28 Agency views were considered in the development of policy proposals.
- 29 Further agency comment on the regulations identified that the word 'possibility' regarding transmitting or spreading COVID-19 in the Medium-risk class would encompass 'low likelihood' in the Low-risk class also. In practice, the Medium risk class will apply to infringement offences that are not Low risk or High risk.
- 30 Agencies also identified implementation needs, primarily relating to enforcement and communication to ensure inequities are not exacerbated by this regime.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 15 October 2021, I, as the Minister for COVID-19 Response authorised by Cabinet Business Committee, made policy decisions for the drafting of the regulations [CBC-21-MIN-0102 refers];
- 2 **note** that I agreed to:
  - 2.1 three classes of infringement offence with corresponding fees and fines based on the risk a breach of a requirement poses regarding spread and transmission of COVID-19: low risk, medium risk and high risk;
  - 2.2 assign classes to the infringement offences contained in sections 32P and 32T of the COVID-19 Public Health Response Act 2020 as high and low risk respectively;
- 3 **note** that the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 will give effect to the decisions referred to in paragraph 1 and 2 above;
- 4 **note** that the maximum fees and fines and the provisions in the Act related to infringement offences will be brought into force concurrently by the commencement order;
- 5 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2021;
- 6 **note** that a waiver of the 28-day rule is sought:
  - 6.1 so that the regulations can come into force as soon as possible;

- 6.2 on the grounds that the increased fees and fines are necessary to deter increasing breaches of COVID-19 orders ahead of the holiday season;
- 7 **agree** to waive the 28-day rule so that the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2021 come into force on 4 December 2021;
- 8 **note** that before making a recommendation for regulations under section 33(1)(a) and (b) of the Act, section 33(1A) requires that the responsible Minister must consider:
- 8.1 the severity and impact of the breaches specified as infringement offences or classes of infringement offences;
  - 8.2 the appropriateness of the penalty for any group likely to be affected, including equity considerations;
  - 8.3 comparable penalties under legislation.
- 9 **note** the advice of the Minister for COVID-19 Response that this requirement has been met.

Authorised for lodgement

Hon Chris Hipkins  
Minister for COVID-19 Response