

COVID-19 Public Health Response Amendment Bill (No 2) 2021

September 2021

Fact Sheet 3: Strengthening the infringement regime

Current state

It is important that everyone in New Zealand follows the requirements set out in COVID-19 Public Health Orders. Even one person breaking the rules can create a grave risk for everyone in New Zealand. The current compliance approach is to educate and support individuals to meet the requirements in the first instance. This approach has been successful for the most part, but there are concerns that the current infringement fee of \$300 does not deter more serious or deliberate breaches as effectively as it could (for example, pre-departure testing can cost more in some countries than the current infringement fee of \$300).

The current penalties are also relatively low compared to other similar infringement regimes. For example, an individual bringing an apple into New Zealand through the air border in breach of bio-security legislation may be subject to an infringement fee of \$400, yet if they breach the pre-departure testing requirement and risk bringing COVID-19 into the country the fee is only \$300.

What is changing?

To ensure there are appropriate infringement penalties to deter non-compliance with Orders, the Bill would increase the maximum infringement fee to \$4,000 (currently \$300), and the court-imposed infringement fine to \$12,000 (currently \$1,000).

Given the social and economic consequences impacts of a single case of COVID-19 in our community, and the subsequent strain that is placed on the health system, the maximum penalties are designed to reflect the risk to New Zealand.

There is currently no distinction between an individual and a body corporate (businesses) in the infringement regime. It is important that the penalties are enough to be an effective deterrent against breaching an Order, and usually a body corporate can more easily afford the penalty. To ensure the infringement regime is proportionate in terms of the risk posed and the resources available to meet infringement penalties, the Bill introduces an infringement fee of up to \$12,000 and a court-imposed infringement fine of \$15,000 for body corporates.

The table below sets out the proposed infringement fee/ fine for individuals and body corporates.

<i>Application</i>	<i>Infringement Fee</i>	<i>Maximum Court fine</i>
<i>Individual person</i>	Up to \$4,000 (currently \$300)	\$12,000 (currently \$1,000)
<i>Body Corporate</i>	Up to \$12,000 (new fee)	\$15,000 (new fine)

Regulations

The Bill also allows regulations to be made that would set the penalties for infringement offences at different levels, taking into account things like the gravity of the offence and potential risk to public health. These regulations are being developed at the same time the Bill is going through Parliament.

We know that infringement penalties can have a greater impact on lower socio-economic groups. These impacts will be carefully considered before finalising the regulations.

Additional changes to criminal penalties

The maximum fine for a criminal conviction in section 26 of the Act will also be revised so it is consistent with the new levels of infringement penalties. A person can be convicted of a criminal offence under the Act if they intentionally fail to comply with a COVID-19 Order. Under the current Act a person can be liable for up to 6 months imprisonment or a maximum fine of \$4,000 if they are convicted of this offence.

The penalties for criminal offences will be changed in a similar manner to the infringement offences. The Bill will increase the maximum fine for an individual (from \$4,000 to \$12,000) and will introduce a new maximum fine for body corporates of \$15,000. There will be no change to the maximum prison term of 6 months.

The increase in fines for a convicted offence is intended to provide a greater deterrent and to reflect the gravity of the risk to New Zealand of an individual or body corporate intentionally breaching a COVID-19 Order.

How will this impact you?

New Zealanders have done an incredible job keeping COVID-19 out of our communities. As New Zealand faces the prospect of reconnecting with the rest of the world, it is more important than ever that people comply with the requirements. People who do not comply with COVID-19 orders will be subject to a higher penalty regime. Education and encouragement to follow the rules will remain the first and best option, but infringement offences will continue to provide an important first level of enforcement action before escalation to court proceedings.

Some ethnic groups within New Zealand (including Māori and Pasifika) have been disproportionately affected by COVID-19 response measures due to the geographic location of clusters. Those groups can be subject to higher Alert Level requirements so may also be disproportionately affected by increased infringement fees. These impacts will be carefully considered when officials are developing the Regulations for infringement offence regime.

COVID-19

The Ministry and other agencies are also working to take a communications and public engagement approach to ensuring the information about requirements is accessible to a wide range of groups, and that compliance is better supported.

Want to know more?

For further information about the COVID-19 Public Health Response Amendment Bill visit the Ministry of Health [website](#).

Read the [Regulatory Impact Statement](#).

To get a copy of the Bill and find out how to make a submission please visit the Parliament [website](#).