

Regulatory Impact Statement: Resource Management (Infringement Offences) Regulations 1999 Review

Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet decisions to amend the Resource Management (Infringement Offences) Regulations 1999</i>
Advising agencies:	<i>Ministry for the Environment</i>
Proposing Ministers:	<i>Hon David Parker, Minister for the Environment</i>
Date finalised:	<i>16 August 2023</i>
Problem Definition	
<p>There is evidence that the existing infringement fees in Schedule 1 of the Resource Management (Infringement Offences) Regulations (the Regulations) are now too low to be an effective deterrent against non-compliance. In many cases, the fee is less than the cost of complying or becoming authorised, meaning it can be cheaper to just pay an infringement notice if caught, rather than follow the rules in the first place. This discourages compliant behaviour.</p>	
Executive Summary	
<p>The Resource Management Act 1991 (RMA) infringement system enable councils to impose a fixed financial penalty for minor environmental offences without the cost and time involved in pursuing a prosecution in court. Offences under the RMA that are infringement offences, and the fee for each infringement offence, are prescribed through the Regulations. There are currently 14 prescribed infringement offences and the associated infringement fees range from \$300 to \$1,000.</p> <p>The Regulations have not been amended since they were introduced in 1999¹. There is evidence that the existing infringement fees in Schedule 1 are now too low to be an effective deterrent. In many cases, the fee is less than the cost of complying or becoming authorised, meaning it can be cheaper to just pay an infringement notice if caught, rather than follow the rules in the first place. This discourages compliant behaviour.</p> <p>The maximum infringement fee that can be prescribed through regulations is set in the RMA. In 2020, Parliament responded to concerns that the infringement fees were too low by increasing the statutory maximum infringement fee in the RMA from \$1000 to \$2000 for individuals, and by introducing a higher statutory maximum infringement fee (\$4,000) for companies. However, the change in statutory maximum fee does not change the fee for each infringement offence, as these are prescribed through the Regulations.</p>	

¹ Other than through the introduction of a new schedule 1A related to stock exclusion infringement offences, which is out of scope of this review

A review of the Regulations is therefore required to update the infringement fees in light of Parliament's decision to increase the statutory maximum infringement fee. The review is also an opportunity to exercise the Ministry's regulatory stewardship responsibilities, to ensure the Regulations are fit for purpose, given the time period since the last review.

A discussion document, which served the purpose of an interim RIS, was released for public consultation in February 2023. The discussion document proposed 3 options for amending the regulations:

1. Increase the fees for every infringement offence proportionally (to account for inflation)
2. Increase the fees for some infringement offences by more than inflation (which also required one infringement offence to be divided into two separate offences) and increase the fees for the remaining offences proportionally (the preferred option)
3. Increase the fees for all infringement offences to the statutory maximum fee specified in the legislation, so that every infringement offence incurred the same (maximum) infringement fee.

The consultation period ran from 7 February to 31 March 2023. Twenty-one submissions were received, and all were in favour of an increase to the fees, with fourteen submissions supporting option 2, four submissions conditionally supporting option 2 (with suggestions for further fee increases), and three submissions supporting option 3.

Submissions identified several other infringement offences where the submitters felt that the fee for that offence should be increased by more than the rate of inflation to ensure consistency with the infringement fees for other similar infringement offences. The matters identified represented a variation to option 2.

The three options were assessed against the same criteria proposed in the discussion document, which served as the interim RIS, being practicality, effectiveness, and reasonableness.

The assessment found that the amended option 2 was still the option that best met the objective of the review, and most effectively delivered on the purpose of the Regulations. While all three options increased the infringement fees, option 1 failed to account for the changing regulatory environment since the regulations were first introduced and left internal inconsistencies in the infringement fees unresolved. Option 3 resulted in the least serious infringement offences getting the largest percentage fee increase and increases the risk that the infringement system will be seen as unreasonable. Option 2 increases the fees to improve effectiveness, improves internal consistency of setting the same fee for similar offences, and is considered the most reasonable.

Option 2 (with amendments as identified through consultation) remains the preferred option. A cost benefit assessment indicates the benefits of the proposed changes are greater than the costs.

Limitations and Constraints

The scope of review of the Regulations (being secondary legislation) is limited by the primary legislation (the RMA). The Regulations can only be used to:

1. Prescribe existing RMA offences as infringement offences.

2. Prescribe fees for each infringement offence that are less than the statutory maximum fee.
3. Prescribe the form and content for both infringement notices and reminder notices.

The key policy decisions were made when the RMA was amended in 2020, and Parliament decided to increase the statutory maximum infringement fee from \$1000 to \$2000 for individuals and create a higher fee of \$4000 for companies. The scope of this review is therefore limited to the above three actions, namely reviewing the offences specified as infringement offences, prescribing fees for each infringement offence (within the limit set by the statutory maximum fee) and reviewing the form and content of the statutory wording for the infringement notice and reminder notice.

The degree of behaviour change caused by increasing the infringement fees is subject to uncertainty. Deterrence theory posits that the degree of deterrence from enforcement is determined by the certainty of getting caught, the speed at which a penalty is delivered and the size of the penalty. Deterrence theory indicates that increasing the infringement fees will improve deterrence and increase compliance. Council feedback which cites examples of existing infringement fees not being sufficient to deter non-compliance adds further support. However, deterrence theory assumes rational actors, and behavioural science calls into question the degree to which the assumption of rationality can be applied to values based social regulation such as environmental regulation. At a system level, there is reasonable confidence that increasing fines will overall lead to better behaviour, but it is not possible to determine a predictive relationship. Setting of infringement fees is based on principled decisions, rather than by being able to identify a correlation between infringement fee level and performance.

Responsible Manager(s) (completed by relevant manager)



Caroline Hart
 Director
 Resource Management Reform Implementation
 Ministry for the Environment
 7 August 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	MfE RIAP
Panel Assessment & Comment:	<i>The Ministry's Regulatory impact analysis panel has reviewed the Regulatory Impact Statement "Resource Management (Infringement Regulations) 1999 Review" and considers that it meets the Quality Assurance criteria. The RIS is clear, relatively concise and complete in that it covers all the RIS elements. It articulates the rationale for the proposal, the alternative options considered and the outcome of consultation. It meets the convincing criterion for its identification and assessment of options for updating the fees for minor infringements that have not been amended since 1999.</i>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The RMA provides councils with a range of powers to take enforcement action when they identify offences against the Act.
2. When a council detects an RMA offence, it can choose to address the offending informally (eg. through education or a verbal warning), by taking enforcement action, or a mixture of both. The purpose of enforcement action is to punish the offending, deter future offending, and/or direct remediation of the damage.
3. An infringement notice is a useful tool for enforcement officers, as it acts as an instant fine that can be issued at the time (or soon after) an offence has been found to have been committed. Infringement notices are used for less serious offending and no conviction is imposed as a result of receiving an infringement notice. Infringement notices can only be issued by a council enforcement officer (authorised under section 38 of the RMA).
4. The level of fees for infringement offences are set in Schedule 1 of the Regulations. Councils are entitled to retain all infringement fees received from infringement notices issued by its enforcement officers. Infringement notices may be issued by a council when they observe, or have reason to believe, that a person has committed an infringement offence.
5. Parliament amended the RMA in 2020 to increase the statutory maximum infringement fee from \$1000 to \$2000 for individuals and \$4000 for companies. Infringement fees currently range from \$300-\$1000 based on the previous maximum of \$1000.
6. The Regulations have not been reviewed for more than 20 years. As the agency responsible for stewarding the Resource Management Act and its secondary legislation, it is timely to review the Regulations to ensure they remain up to date, fit for purpose, and effective.

What is the policy problem or opportunity?

The current regulations are out of date, and in need of review

7. The purpose of the Regulations is to provide an administratively efficient system for RMA enforcement officers to impose meaningful fixed financial penalties in response to minor environmental offending, without the cost or time involved in pursuing a prosecution through the Courts.
8. In 2016, the Ministry for the Environment produced a report on compliance monitoring and enforcement by councils under the RMA.² This research found that many councils and stakeholders considered that the infringement fees set in the Regulations were too low. It was suggested that infringement fees should be higher for companies – as occurs with penalties in prosecutions – to provide a more effective deterrent for entities earning profit through their private use of public resources.

² <https://environment.govt.nz/assets/Publications/Files/compliance-monitoring-and-enforcement-report.pdf>

9. The New Zealand Productivity Commission also noted in its 2013 report³ that the “low level of fees that have not been reviewed for many years, are reducing the effectiveness of enforcement strategies”. For example, in that report, Auckland Council notes that an infringement notice for the breach of a land-use rule in a district plan incurs a \$300 fine. They stated that the cost of applying for a resource consent is usually more than ten times this amount. Other councils have also reported that some individuals/companies see infringement fees as ‘the cost of doing business.’ Therefore, they considered the deterrent effect of the current infringement fees is minimal and is not sufficient to deter non-compliant behaviour for some offenders.
10. The Reserve Bank of New Zealand’s inflation calculator⁴ indicates that the general CPI in the period from the 3rd quarter of 1999 until the first quarter of 2023 has been 78.8%, while the wage inflation has been 123.8% over the same period. Wage inflation is considered more relevant to the setting of infringement fees, as the ability to pay a fine is influenced by a person’s earnings. Infringement fees set in 1999 can be expected to have approximately half the deterrent effect that they would have had when they were set.
11. The risk of having fees set at too low a level is that the infringement system does not provide a credible deterrence to non-compliance. Inadequate deterrence can lead to more non-compliant behaviour, greater environmental harm, inequity of peoples access to natural resources, and an undermining of Councils and the public’s confidence in the enforcement system. If Councils lose confidence in the infringement system, either no enforcement action will be taken against minor non-compliance (which is likely to lead to a further reduction in deterrence and increased non-compliance) or Councils will have to prosecute minor offending in Court, leading to increased time and costs of justice, and increased workload on the court system. It is essential that the infringement system works as it was intended.
12. The first step in responding to the concerns about the fees being too low was taken by Parliament in 2020. The RMA was amended to increase the maximum fees that can be set for infringement notices and introduced different maximum fees of \$2000 for individuals and \$4000 for companies.

What is the Policy objective

13. The objective of this policy process is to review the Regulations to ensure:
 - a. they are fit for the purpose set out in para 7 above, and
 - b. the infringement offences and infringement fees are appropriate for current needs (particularly in light of the 2020 increase to the statutory maximum fees).

³ New Zealand Productivity Commission. 2013. Towards Better Local Regulation. Wellington: Productivity Commission.

⁴ [Inflation calculator - Reserve Bank of New Zealand - Te Pūtea Matua \(rbnz.govt.nz\)](https://rbnz.govt.nz/inflation-calculator)

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

14. The following criteria were used in the interim RIS (discussion document) to assess each of the policy options. These criteria are used for assessing the policy options in this final RIS.

Practical

15. The options will be assessed under this criterion to consider how they:
- ensure consistency between primary legislation and regulations.
 - make it easy for councils to implement and does not require major changes to existing systems and processes.
 - increase the quality of monitoring and compliance approaches by councils.

Effective

16. The options will be assessed under this criterion to determine the level by which they:
- strengthen deterrence of non-compliance with the RMA by users of the system.
 - support compliance monitoring and enforcement objectives.
 - support protection of resources.

Reasonable

17. The options will be assessed under this criterion to see how they:
- target those who are contravening environmental rules.
 - reflect the relative importance of the offending and the associated environmental effects.
 - treat regulated parties who must comply with environmental laws fairly.

What scope will options be considered within?

18. This review is to update the fees in Schedule 1 of the Regulations to bring them in line with the 2020 legislative change and to make any consequential amendments necessary to keep the regulations fit for purpose and effective. Parliament's decision to amend the RMA to enable the increased fee maximums that preceded this review, was subject to its own regulatory impact analysis when it was undertaken in 2020. The proposed options will be informed and constrained by the decision and analysis that informed the legislative change.
19. By statute, the Regulations have limited scope and can only do several things. Firstly, the Regulations prescribe the RMA offences that are also infringement offences, secondly, they prescribe infringement fees for each infringement offence, and thirdly, they prescribe the standard form and content of both the infringement notice, and the reminder notice. Any other changes to the infringement system are outside of the scope of this review.
20. Schedule 1A of the Regulations were inserted by the Resource Management (Stock Exclusion) Regulations 2020 (the Stock Exclusion Regulations). This schedule of stock exclusion infringement offences and infringement fees already makes use of the increased statutory fee maxima introduced in the 2020 amendments to the RMA. The infringement offences and infringement fees were prescribed through the Stock Exclusion Regulations policy process as a critical element of delivering on the

objectives of the Stock Exclusion Regulations, and so any amendment to schedule 1A is best considered as part of a review of the Stock Exclusion Regulations. Amending schedule 1A is therefore considered out of scope of this review.

What options are being considered?

21. A discussion document, that served as an interim RIS was prepared for public consultation. The discussion document proposed three options to change the regulations, which can be summarised as:
1. A minimum change option, where each infringement offences would have its prescribed fee proportionally increased⁵ (effectively increased in line with inflation).
 2. A combination option, where some offences would have their fees proportionally increased for inflation, while other offences would have their fees increased by a great amount to better reflect their more than inflation
 3. A maximum option, where an increase of the infringement fee for every infringement offence to the statutory maximum fee.
22. The interim impact assessment in the discussion document identified Option 2 as the preferred option.

Public Consultation

23. Public consultation took place from 7 February to 31 March 2023. The discussion document was published on the Ministry for the Environment website. A public webinar was hosted on 13 March 2023. Notice of the Infringement Regulation Review was publicised in the Ministry's newsletter to Local Government, in its RM Reform newsletter, and in its Māori engagement newsletter ePanui.
24. There were twenty-one written submissions on the discussion document. Twenty-one submissions were received, and all were in favour of an increase to the fees, with fourteen submissions supporting option 2, four submissions conditionally supporting option 2 (with requests to make further increases to some fees), and three submissions supporting option 3.
25. Fourteen submissions were from local government (Councils, and entities representing Councils) one was from a building sector representative group, one from an environmental NGO, and five submissions were from individuals.
26. The general themes from consultation included the need to increase infringement fees, the need for consistency so that similar offences had similar fees, the need to support councils with compliance and enforcement training and guidance, and that the regulations be reviewed more often to keep them up to date.
27. Option 2 remains the preferred option following public consultation, although additional amendments to option 2 are being proposed as a result of consultation.

What is the amended option 2 following consultation?

28. The proposed changes to option 2 following consultation are:

⁵ A proportional increase means an infringement offence with a fee that is 50% of the previous statutory maximum fee would have its fee increased to be 50% of the new relevant statutory maximum fee.

- a. Make one further change to the infringement offence provisions (in addition to the one change proposed in the discussion document).
- b. Change the seriousness band for four additional infringement offences (from the two proposed in the discussion document).
- c. Make changes to the infringement and reminder notice forms.

Description of Option 2 following amendments

Proposed changes to infringement offence provisions

29. There are two changes to infringement offence provisions being proposed.

- a. The first is a change to the current infringement offence for contravening a land use rule.
 - i. Section 9 of the RMA sets out restrictions on the use of land. Restrictions include using land in contravention of a national environmental standard (s9(1)), a regional plan rule (s9(2)), a district plan rule (s9(3)), or in contravention of a designation or a heritage order (s9(4)).
 - ii. Currently there is a single infringement offence (and therefore one infringement fee) for any contravention of the restrictions in s9 of the RMA. However, since the Regulations were first gazetted in 1999, there has been a significant increase in the number of regional land use rules, and national environmental standard (NES) land use rules, put in place to protect water quality.
 - iii. The existing infringement fee for contravening a land use rule (\$300) is inadequate to deter contraventions of land use rules put in place to protect water quality, such as land rule rules to control sediment loss from urban subdivisions. Given these land use rules control discharges that may enter water, the small infringement fee is inconsistent with the infringement fee payable for the offence of discharging contaminants to water (\$750).
 - iv. The proposal is to separate the existing single land use infringement offence into two offences, being a contravention of s9(1) or 9(2), and a contravention of s9(3) and 9(4), with different fees, to enable the offence of contravening a regional or NES land use rule to have the same infringement fee as for discharge to water infringement offences.
- b. The second is a change to the current infringement offence of contravening s338(1A) of the RMA.
 - i. S338(1A) of the RMA makes it an offence to contravene section 15A (Dumping and incineration of waste or other matter in the Coastal Marine Area (CMA)) or s15C (relating to radioactive waste disposal in the CMA).
 - ii. Currently the only s338(1A) RMA offence specified as an infringement offence in the Regulations is a contravention of 15A(1)(a), being the dumping from a ship, aircraft or offshore installation in the CMA. The incineration of waste (15A(1)(b)) and the dumping of a ship, aircraft or offshore installation (15A(2)) is not currently an infringement offence, despite being an offence under the RMA. This means those offences can only be proceeded against by prosecution in Court.

- iii. Councils occasionally need to deal with dumping of small craft in the CMA, and an infringement offence would be an efficient and proportionate way of responding to such issues.
- iv. The proposal is to expand the application of the infringement offence to apply to any contravention of s15A, meaning an infringement notice could be issued for dumping from, or dumping of ship, aircraft or offshore installation, and the incineration of waste, in the CMA.

Proposed changes to infringement fees

- 30. In the current Regulations, infringement offences are banded into four seriousness bands, each attracting infringement fees set at 30%, 50%, 75% and 100% of the previous statutory maximum infringement fee (\$1000).
- 31. The Resource Management Amendment Act 2020 doubled the statutory maximum fee for offences by individuals to \$2000 and quadrupled the statutory maximum fee for offences by companies to \$4000.
- 32. The proposed starting point for amending the infringement fees is to recast the infringement fees at 30%, 50%, 75% and 100% of the new statutory maximum fees (\$2000 and \$4000).
- 33. The second proposed step is to move six infringement offences from their current seriousness band to a higher seriousness band. The proposal is to:
 - a. Move the infringement offence for contravening a regional or NES land use rule (s9(1) or s9(2)) from the 30% band into the 75% band, for consistency with the discharge to water infringement offence (s15(1)), as both offences are contraventions of provisions created to protect water quality, and the discharge to water infringement offence is currently located in the 75% band.
 - b. Move the infringement offence for contravening an abatement notice from the 75% band into the 100% band, as contravening a formal direction is an aggravating factor⁶, warranting the highest infringement fee to send a clear message that formal directions from regulatory agencies must be complied with.
 - c. Move the infringement offence for contravening a water shortage direction from 50% band into the 100% band, as a water shortage direction is also a formal direction and warrants a fee consistent with that proposed for the contravention of an abatement notice.
 - d. Move the infringement offence for dumping from, or of, a ship, aircraft or offshore installation, or incineration of waste in the Coastal Marine area from the 50% band to the 75% band, as it relates to discharging contaminants into water, and ought to be consistent with the discharging contaminants to water offence, which is in the 75% band.
 - e. Move the infringement offence for discharging harmful substances or contaminants into the Coastal Marine area from the 50% band to the 75% band, as it relates to discharging specific contaminants into water, and ought to be

⁶ An aggravating factor is a characteristic of a person's offending that increases the seriousness of the offence. Deliberateness, such as undertaking an activity despite having received formal direction to stop, or not commence that activity, is considered an aggravating factor, warranting a more severe sanction.

consistent with the discharging contaminants to water offence, which is already in the 75% band.

- f. Move the infringement offence for failing to provide information to an enforcement officer (under s22 of the RMA) from the 30% band to the 50% band. This move will result in a three-fold increase in the infringement fee for this offence (from \$300 under the existing regulations to \$1000 under the revised regulations). A three-fold increase is the same increase that has been recommended for the statutory penalty for the same offence in the Natural and Built Environment Bill reported back to Parliament by the Environment Select Committee.

- 34. A comparison of the existing infringement fees, the infringement fees proposed in the discussion document that formed the interim RIS, and the final recommended infringement fees after consultation are listed in Appendix 1.

Changes to Forms

- 35. The Regulations prescribe the form of the infringement notice (Schedule 2) and of the reminder notice (schedule 3).
- 36. The Environment Court, in a 2010 case⁷, noted a drafting issue with Schedule 2 and Schedule 3 that was unfair to the extent of creating an actual or potential injustice. The issue is that since the Regulations were released in 1999 the courts have found that the consequences of a recipient seeking a hearing for an RMA infringement notice is that the recipient may become liable for a higher fine than the original infringement fee. This consequence is not highlighted in the statutory form for the infringement notice or the reminder notice, which represents an injustice or potential injustice.
- 37. The proposal is to update both the infringement notice schedule (Schedule 2) and the reminder notice schedule (Schedule 3) to include text that clearly identifies that the recipient of an infringement notice who seeks a hearing may become liable for a fine that exceeds the original infringement fee. This proposed change does not change the legal consequence of seeking a hearing, but merely ensures that recipients of infringement notices are aware of this potential consequence, so they can make fully informed decisions when choosing to seek a hearing on an infringement notice.

⁷ *Otago Regional Council v Bloem* [2010] NZRMA 322

How do the options compare to the status quo/counterfactual?

	Option 1 – Minimum change option	Option 2 – Combination option	Option 3 - Maximum option
Practical	<p>++</p> <p>Option 1 would improve the consistency between regulations and primary legislation but would not address some internal inconsistencies in the regulations.</p> <p>There may be a small impact on councils to update their templates and systems to reflect the new fine amounts, but this option does not require major changes to existing systems and processes.</p> <p>The increased fees would increase the contribution to council's costs of issuing infringement notices, and make a small reduction in the funding burden on ratepayers for addressing non-compliance.</p>	<p>+++</p> <p>Option 2 would achieve consistency between regulations and primary legislation, as well as addressing internal inconsistency in the current regulations.</p> <p>There may be a small impact on councils to update their templates and systems to reflect the new fine amounts, but these options do not require major changes to existing systems and processes.</p> <p>The increased fees would make a larger the contribution to council's costs of issuing infringement notices and make a small reduction in the funding burden on ratepayers for addressing non-compliance.</p>	<p>++</p> <p>Option 3 would result in consistency between regulations and primary legislation but setting the same fee for every offences may be perceived as excessive and unfair by some users.</p> <p>Having a single fine for all offences would simplify the infringement system. There would still be an impact on councils to update templates and systems, but no major changes are required.</p> <p>The increased fees would make the largest the contribution to council's costs of issuing infringement notices, but still only make a small reduction in the funding burden on ratepayers for addressing non-compliance.</p>
	<p>+</p> <p>Option 1 would provide stronger deterrence, in that all fees would be increased, but fees for offences with similar effects may be inconsistent with each other.</p>	<p>++</p> <p>Option 2 would provide stronger deterrence in that all fees would be increased and would result in similar fees for offences with similar effects.</p>	<p>++</p> <p>Option 3 would provide the strongest deterrence but makes all fees the same even though some offences may be perceived to be less serious effects than others.</p>

	<p>Promotes the objectives of maximizing compliance for most infringement offences, but fees for some offences may be too low.</p> <p>Maintains a hierarchy of fees that is consistent with the previous regulations' but may not reflect the most up-to-date views of resource protection.</p>	<p>Increased fees better reflect seriousness and provide a logical hierarchy of increasing penalty.</p> <p>Option 2 goes further than option 1 and provides an opportunity for a more detailed consideration of the levels of individual fees. This better reflects the relative importance of those offences to which fees relate.</p>	<p>May set fee levels at a level that is perceived to be unfair for some offences, increasing the number of legal challenges,</p> <p>The high fee level may dissuade some Councils from issuing notices when enforcement action is warranted.</p> <p>The inference that there no inherent difference in seriousness between different infringement offences may undermining public confidence and support for enforcement activity.</p>
Reasonable	<p>+</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Maintains the existing relative importance between offences set in 1999.</p> <p>Simply adjusts previous fees for inflation, so existing hierarchy is maintained. May not reflect the increased effort applied by many resource users to be compliant.</p>	<p>+++</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Reflects the relative importance of offences, the decreased societal acceptance of environmental offending, and the importance of protecting water quality.</p> <p>Better reflects compliance efforts of existing resource users and inflation adjusts the remaining fines.</p>	<p>+</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Treats all offences as being equal in terms of their seriousness.</p> <p>The greatest fee increase would be for infringement offences that were previously considered to be less serious, and the quantum of increase is considerably more than the rate of inflation over the period.</p>
Overall assessment	++++	++++++	+++++

What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Compliant regulated groups	No additional or increased costs on regulated parties who are compliant.	No impact	High
Non-compliant regulated groups (offenders)	Significantly increased cost for non-compliant parties who receive infringement notices	Medium impact	Medium
Regulators	No additional costs to councils as systems are already in place (apart from minor administration costs for updating fee levels) Small risk that increased fees may lead to increased hearing requests, and increased defaults on infringement notice payment rates	Low impact	Medium
Others (eg, wider govt, consumers, etc.)	Small risk that the Courts may experience higher volumes of requests for hearings, and greater costs to recover unpaid infringement notices	Low impact	Medium
Total monetised costs			
Non-monetised costs		Low impact	Medium
Additional benefits of the preferred option compared to taking no action			
Compliant Regulated groups	Increased infringement fee recovery reduces general rate contribution to Council compliance and enforcement programmes, reducing costs for compliant parties	Low/Moderate impact	Medium

Non-compliant regulated groups	Clearer description of implications of seeking a hearing, avoiding a potential injustice.	Moderate impact	High
Regulators	Small increase in councils' income from fees received (which can be used to offset general rate contribution to C&E activity), and increased deterrence against non-compliance, resulting in improved performance	Moderate impact	Medium
Others (eg, wider govt, consumers, etc.)	Higher fees will provide increased deterrence, improving compliance and reducing harm to the environment. The reputation of the resource management system is improved by greater deterrence, improved performance, and confidence that non-compliance can be promptly and effectively responded to.	Moderate impact	Medium
Total monetised benefits			
Non-monetised benefits		Moderate Impact	Medium certainty

38. Overall, making the adopting option 2 is beneficial compared to the status quo.

39. The changes will increase the consequences for those who breach environmental laws, improve the effectiveness of Council compliance and enforcement activities, reduce costs for the general ratepayers and compliant resource users, improve environmental outcomes, improve the fairness of the resource management regulatory system, and address a potential injustice that exists within the existing infringement regime.

40. The benefits of making the changes to the regulations are positive when compared to the costs.

Section 3: Delivering an option

How will the new arrangements be implemented?

41. Councils have been issuing Resource Management infringement notices since the Regulations originally came into effect in 1999, so already have the systems in place to continue with their use. The proposed changes to the Regulations will not impact on the Councils ability to use their existing systems, other than perhaps minor changes that may be required to update their templates for the changes to the offence provisions, and the increased fee amounts. A one-off change will be required to their templates to reflect the wording change that will be required for the infringement and reminder notice form. The Ministry for the Environment will notify councils of the change, and construct guidance to support them to make use of the updated regulations.
42. The Ministry of Justice may need to make administrative changes to its digital systems used to lodge unpaid infringement notices for recovery. This is likely to include the changes to the offence provisions, and the increased fee amounts. The Ministry for the Environment will notify the Ministry of Justice about the changes to fees.
43. The Resource Management system is currently being reformed, with the Spatial Planning Bill and the Natural and Built Environment (NBE) Bill being debated by Parliament. The NBE Bill proposes that resource management compliance and enforcement activities will continue under the RMA until a regions NBEA date⁸, at which time, C&E will transition to the new legislative regime. At the same time, the Regulations will transition from being RMA regulations to being Natural and Built Environment Act regulations, without need for further amendment.

How will the new arrangements be monitored, evaluated, and reviewed?

44. The Minister for the Environment is responsible for monitoring the implementation and effectiveness of the RMA at the national level under sections 24(f), (g), and (ga) of the Act. These functions are fulfilled by the Ministry for the Environment on the Minister's behalf. The Ministry also has broader mandate under the Environment Act 1986 to monitor the operation and effectiveness of a broad range of environmental Acts and to advise the Minister on all aspects of environmental administration.
45. The Ministry's main source of data for monitoring the implementation of the RMA is the National Monitoring System (NMS). The NMS is intended to provide a comprehensive and coordinated national framework to monitor the RMA. The NMS already collects annual information about the usage of infringement notices. Some minor changes will need to be made to data collection processes to reflect the proposed changes, however these are expected to be minor, as the NMS annual questionnaire is regularly updated. The NMS will be used to monitor and report on the usage of the fees under the Regulations.
46. The Regional and Unitary Councils issue the majority of the infringement notices under the RMA. Regional and Unitary Councils produce a Compliance Metrics report

⁸ A **region's NBEA date** means the date that the first natural and built environment plan for a region is treated as operative. This is 10 working days after the regional planning committee publishes their decisions on an Independent Hearing Panel's recommendation on the plan, as per Schedules 1 (Subpart 3) and 7(127) of the Natural and Built Environment Act.

annually that details a range of compliance and enforcement metrics, including the use of infringement notices.

47. The Ministry participates in the Regional and Unitary Councils Compliance Managers forum, which is a valuable source of information about how well the regulations are working, and whether they are being effective. Feedback from Councils was a key driver for this review of the Regulations, and the Ministry will continue to engage regularly with resource management regulators to test the effectiveness of the whole resource management compliance and enforcement system.
48. Evaluation of the effectiveness of the Regulation review will make use of both formal quantitative data analysis and informal qualitative data collection. Formal analysis will be by trend monitoring of reported infringement notice use in the NMS, and analysis of the referral rates of unpaid infringement notices to the Ministry of Justice for recovery. Informal qualitative effectiveness monitoring will be undertaken by maintaining strong networks with local government compliance professionals, which will allow the Ministry to receive anecdotal reports and capture issues about how the revised regulations are working in practice in an issue register, for use in subsequent amendments and reviews.

Appendix 1 Proposed changes to offences and fees

Description of offence	Existing infringement fee (\$)	Discussion document preferred option infringement fee (\$)		Recommended infringement fees following consultation (\$)	
		Individual	Company	Individual	Company
Contravention of section 9(1) and 9(2) (restrictions on use of land)	300	1500	3000	1500	3000
Contravention of section 9(3) and 9(4) (restrictions on use of land)	300	600	1200	600	1200
Contravention of section 12 (restrictions on use of coastal marine area)	500	1000	2000	1000	2000
Contravention of section 13 (restriction on certain uses of beds of lakes and rivers)	500	1000	2000	1000	2000
Contravention of section 14 (restrictions relating to water)	500	1000	2000	1000	2000
Contravention of section 15(1)(a) and (b) (discharge of contaminants or water into water or onto or into land where contaminant is likely to enter water)	750	1500	3000	1500	3000
Contravention of section 15(1)(c) and (d) (discharge of contaminants into environment from industrial or trade premises)	1000	2000	4000	2000	4000
Contravention of section 15(2) or (2A) (discharge of contaminant into air or onto or into land)	300	600	1200	600	1200
Contravention of an abatement notice (other than a notice under section 322(1)(c))	750	2000	4000	2000	4000
Contravention of a water shortage direction under section 329	500	1000	2000	2000	4000

Contravention of section 15A (dumping of waste or other matter from any ship, aircraft, or offshore installation)	500	1000	2000	1500	3000
Contravention of section 15B(1) and (2) (discharge in the coastal marine area of harmful substances, contaminants, or water from a ship or offshore installation)	500	1000	2000	1500	3000
Contravention of section 22 (failure to provide certain information to an enforcement officer)	300	600	1200	1000	2000
Contravention of an excessive noise direction under section 327	500	1000	2000	1000	2000
Contravention of an abatement notice for unreasonable noise under section 322(1)(c)	750	1500	3000	1500	3000