



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes	Date to be published	19 July 2023

List of documents that have been proactively released

Date	Title	Author
25 May 2023	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes	Office of the Minister of Energy and Resources
31 May 2023	Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021: infringement offence regulations and consequential changes to programmes DEV-23-MIN-0091 Minute	Cabinet Office
2 May 2023	Regulatory Impact Statement: Infringement offence regulations under the Crown Minerals Act 1991	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Regulatory Impact Statement: Infringement offence regulations under the Crown Minerals Act 1991

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing Cabinet decisions for infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021.
Advising agencies:	Ministry of Business, Innovation and Employment
Proposing Ministers:	Minister of Energy and Resources
Date finalised:	2 May 2023

Problem Definition	
<p>The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 (Amendment Act) provides the regulator New Zealand Petroleum and Minerals (NZP&M), a business unit of the Ministry of Business, Innovation and Employment (MBIE), with enforcement powers to accept enforceable undertakings, issue compliance notices, and either issue infringement notices or file charging documents in relation to alleged infringement offences.</p> <p>Infringement offences are an administratively straightforward tool for responding to low-level non-compliance with permit and licence holder obligations, for example, filing reports and royalty returns on time.</p> <p>In order to give effect to the Amendment Act, infringement offences and corresponding infringement fees will need to be prescribed in regulations. In the absence of such regulations (status quo) NZP&M will be unable to give effect to the Amendment Act, as it would not be possible to issue infringement notices to permit and licence holders.</p>	

Executive Summary	
<p>This Regulatory Impact Statement (RIS) covers changes to regulations to implement infringement offences under the Crown Minerals Act 1991 (CMA). This includes areas where there is existing non-compliance with low-level obligations, and also low-level decommissioning related obligations where the financial risk to the Crown from repeated non-compliance could be high.</p> <p>Implementing infringement offences is expected to improve compliance with the regulatory regime and therefore the operation of the CMA. In order to implement infringement offences to address the aforementioned areas, this RIS analyses options related to:</p> <ul style="list-style-type: none">• what behaviour infringement offences are prescribed for• the fees associated with these offences• the prescribing of fines to guide the court how to reprimand the failure to comply with the infringement offence scheme.	

Despite the anticipated advantages of the proposed changes, the associated costs and benefits have not been subject to a business case due to the absence of reliable quantitative information. Nevertheless, MBIE considers that the proposed approach represents an appropriate balance between incentives and enforcement activity, and is intended to reduce the burden on government and the community in addressing the consequences of non-compliant activity.

The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 provides MBIE with enforcement powers in relation to infringement offences

The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 provides MBIE with enforcement powers to accept enforceable undertakings, issue compliance notices, and either issue infringement notices or file charging documents in relation to alleged infringement offences.

These new enforcement powers apply to all minerals and petroleum permit and licence holders under the CMA. Permit holders range from large multi-national companies holding Tier 1 permits to smaller hobby operations operated under Tier 2 permits.

MBIE proposes regulations to enable the implementation of infringement notices

Under the Amendment Act, infringement notices with associated fees may be issued to a permit or licence holder if MBIE determines they have committed an infringement offence. In order to be issued, regulations must prescribe the conduct that constitutes an offence and its associated fee.

The Amendment Act also provides that infringement fines may be prescribed in regulations. Infringement fines are imposed by the Courts in proceedings against the permit or licence holder, for example if they fail to pay the infringement fee.

Having regulations in place implementing infringement offences by mid-2023 will enable offences related to the payment of royalties for the 2023 to be addressed. Additionally, implementing infringement offences in 2023 will fulfil one aspect of regulatory change envisaged by the Amendment Act.

MBIE designed proposals that met set objectives

This analysis supports policy decisions on the proposed infringement offence regulations to meet the following objectives:

- improve minerals and petroleum permit and licence holder compliance with simple, specific requirements, and
- ensure the consistent imposition of infringement fines for each infringement offence by the Courts.

MBIE considered several options for prescribing infringement offences, fees and fines

	Options considered	Recommended option
Infringement offences	<p>Option 1 – Status quo (no infringement offences are prescribed in regulations)</p> <p>OR</p> <p>Option 2 – Four categories of infringement offences</p>	<p>Option 3 – Four categories of infringement offences (including decommissioning-related offences).</p>

	(excluding decommissioning-related offences) OR Option 3 – Four categories of infringement offences (including decommissioning-related offences).	
Infringement fees	Option 1 – Status quo (no fees prescribed) OR Option 2 – Flat infringement fee of \$1,000 for an individual and \$3,000 in any other case (e.g., a body corporate) for all offences and permit/tier levels OR Option 3 – Infringement fee of \$500 for an individual and \$1,000 in any other case for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 in any other case for offences relating to Tier 1 permits.	Option 3 – Infringement fee of \$500 for an individual and \$1,000 in any other case for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 in any other case for offences relating to Tier 1 permits.
Infringement fines	Option 1 – Status quo (maximum infringement fine only defined in the CMA) OR Option 2 – Maximum infringement fines based on the tier of the permit/license.	Option 2 – Maximum infringement fines based on the tier of the permit/license

Most of the options considered were consulted on

MBIE publicly consulted on most of the proposed infringement offences and infringement fees in September-October 2021 while the Amendment Act was being considered by Parliament.¹ Some proposals, such as specific decommissioning-related offences and infringement fines, were not consulted on as the then-Bill was amended during the Select Committee process (reported back in November 2021). Offences related to section 8(1) of the CMA also have not been consulted on.

MBIE received nine submissions on the Discussion Document, all from industry submitters. Five submitters opposed the use of infringement offences altogether. Four

submitters were supportive in principle but expressed concern around the implementation of the infringement notices. Implementation concerns have been addressed in Section 3.

MBIE anticipates a low increase in overall costs with the preferred options

Permit and licence holders may incur one-off costs to improve their internal systems to avoid future non-compliance. Should they receive an infringement notice, they will also need to pay the associated fee. Should they choose to contest notices, they may incur medium legal costs.

MBIE will incur a low, one-off cost to update its policies and systems to include the new enforcement tool. There may also be ongoing low costs from monitoring and enforcing the infringement offence regime. The Courts will also incur a minimal cost of contested infringement notices and enforcing the non-payment of fees with fines.

Limitations and Constraints on Analysis

The range of options considered is constrained by the regulation-making powers provided for in the Act

Section 104A of the CMA defines an infringement offence as one 'that is prescribed as an infringement offence against the regulations.' These may relate to breaches of obligations set out in the CMA, associated regulations, or notices (made under the CMA).

Fees and fines cannot exceed the maximum set by section 104J of the CMA:

- For fees, \$1,000 for an individual and \$3,000 in any other case.
- For fines, \$2,000 for an individual and \$6,000 in any other case.

Options were assessed based on submissions on the Discussion Document

MBIE developed options informed by submissions on the Discussion Document. Where submissions suggested amendments to proposed options, MBIE has considered or reflected them in final proposals to the extent relevant.

Options for the fines were not consulted on, nor were infringement offences relating to some decommissioning requirements developed during the Select Committee process of the Amendment Act. Offences related to section 8(1) of the CMA were also not consulted on.

Non-monetised cost and benefit impacts were used

In the absence of reliable quantitative information, non-monetised cost and benefit impacts have been identified by taking into account submissions and considering other infringement offence regimes. Infringement notices are designed to be an administratively straightforward enforcement tool, therefore minimal costs are anticipated.

¹ See [Discussion Document: Proposed infringement offence regulations under the Crown Minerals \(Decommissioning and Other Matters\) Bill](#)

Responsible Manager(s) (completed by relevant manager)

Dominic Kebbell
Manager
Resources, Gas and Fuel Supply Policy
Ministry of Business, Employment and Innovation



2 May 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Business, Innovation and Employment
Panel Assessment & Comment:	The MBIE Assessment Panel has reviewed the paper and considers that the information and analysis summarised in the Impact Statement 'meets' the criteria necessary for Ministers to make decisions on the proposals.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

The Crown Minerals Act 1991 enables MBIE to issue infringement notices

1. The Crown Minerals (Decommissioning and Other Matters) Amendment Act 2021 (Amendment Act) received Royal Assent on 1 December 2021. This amended the Crown Minerals Act 1991 (CMA), providing the Ministry of Business, Innovation and Employment (MBIE) with enforcement powers to accept enforceable undertakings, issue compliance notices, and issue infringement notices. These changes were intended to give MBIE, as the regulator, sufficient and fit-for-purpose compliance tools to ensure that the regulatory regime is working effectively and in line with modern regulatory practice.
1. The new enforcement powers apply to all minerals and petroleum permit and licence holders under the CMA. The Crown minerals permitting regime has 837 active permits across New Zealand, its territorial waters, and exclusive economic zone.
2. MBIE allocates either a Tier 1 or Tier 2 status to all permits. A Tier 1 permit relates to petroleum, or other complex, higher risk and higher return mineral operations that require a more hands-on and proactive regulatory regime. Due to the nature of Tier 1 permits, they are usually held by large businesses, including multinationals.
3. A Tier 2 permit is any permit that is not considered a Tier 1 permit and relates to lower return industrial, small business, or hobby mineral operations needing a

simpler, less stringent management regime. This is defined under section 2B of the CMA.

4. Of the active permits, 78 are Tier 1 which includes some minerals permits and all petroleum licences and permits. There are 737 Tier 2 minerals permits.
5. Infringement notices are an administratively straightforward tool for responding to low-level non-compliance with permit and licence holder obligations, for example, filing reports and royalty returns on time.

The infringement offences and infringement fees may be prescribed in regulations

6. Under section 104B infringement notices with associated fees may be issued to a permit or licence holder if the regulator determines, on reasonable grounds, that the person is committing or has committed an infringement offence. Regulations must prescribe conduct that would constitute an infringement offence and the fee associated with the offence.
7. The main focus of the proposed infringement offence regime is to increase compliance with administrative tasks required as part of an activity under the CMA. These tasks include the payment of royalties and reporting of documents.
8. The CMA also allows for infringement fines to be prescribed in regulations. Infringement fines are imposed by the Courts, including in proceedings against the permit or licence holder for failing to pay the infringement fee.

MBIE consulted on proposed infringement offences and infringement fees in 2021

9. MBIE publicly consulted on proposed infringement offences and infringement fees in September-October 2021² while the Amendment Act was being considered by Parliament.
10. During the Select Committee process, the proposals in the then-Bill were amended to provide for the prescribing of fines, therefore infringement fines were not consulted on in the Discussion Document.
11. Alongside the proposed infringement offences, the Amendment Act created new requirements related to decommissioning to come into effect from December 2023. This Regulatory Impact Statement (RIS) considers whether infringement offences should be extended to the new decommissioning related requirements, to ensure their effective implementation.
12. Annex One includes the questions asked in the Discussion Document. MBIE analysed the nine submissions from industry groups and permit holders (both Tier 1 and Tier 2) and are not proposing any changes in response.

How is the status quo expected to develop and what is the policy problem or opportunity?

13. Without regulations that prescribe the conduct constituting an infringement offence and the associated infringement fee, the regulator will be unable to issue infringement notices to permit or licence holders under the CMA.
14. Between 2018 and 2020 around 13 per cent of Tier 1 permit holders failed to comply with a minor obligation under the CMA or its associated legislation. A minor obligation includes, for example, submitting an annual summary report by a

² See [Discussion Document: Proposed infringement offence regulations under the Crown Minerals \(Decommissioning and Other Matters\) Bill](#)

specified date. For Tier 2 permit holders non-compliance with minor obligations ranged between 11 and 30 percent for the same period.

Without infringement offences there is no cost effective or low-cost way to deal with low level offending

15. Under the status quo, MBIE does not have effective tools to address these minor, straightforward breaches of the CMA. MBIE could send a letter requesting the permit holder address the non-compliance, however that does not legally compel action. If that is unsuccessful in changing non-compliant behaviour, MBIE may have to resort to existing compliance tools.
16. Existing compliance tools include taking action through the Courts or initiating the permit revocation process, both of which are disproportionate to the offence, time-intensive and costly. Non-compliance with simple, specific requirements will likely continue for both Tier 1 and Tier 2 permit holders.

When enforcement action or escalation is appropriate, setting maximum infringement fines in regulation provides certainty

17. If infringement offences and fees are prescribed in regulations, but not infringement fines, it would be possible for the Courts to issue fines under the Summary Proceedings Act 1957 and the Criminal Procedure Act 2011. In this scenario, the level of fine to impose for failure to pay the infringement fee would be up to the discretion of the Courts. The Courts could be guided by the maximum fines for offences provided for in the CMA. However, setting a maximum fine in regulations for an infringement offences provides desirable certainty.

What objectives are sought in relation to the policy problem?

18. The objectives of the proposed regulations are to:
 - improve minerals and petroleum permit and licence holder compliance with simple, specific requirements, and
 - ensure the consistent imposition of infringement fines for each infringement offence by the Courts.

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

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

19. The following four criteria will be used to compare options to the status quo:
 - **Effectiveness** – the infringement offence will relate to behaviour for which MBIE either has evidence of non-compliance or where the impact of such potential behaviour on the Crown would be high, and the associated penalties will be set at a level that is an effective deterrent for that behaviour.
 - **Proportionality** – the infringement offences will relate to low-level breaches of permit and licence holder requirements under the Crown minerals permitting

regime and the associated penalties will be set at a level that is proportionate to the offence.

- **Regulatory certainty** – the infringement offences and associated penalties are clear and transparent to both permit/licence holders and MBIE, and provide for predictable regulatory outcomes.
- **Practicality** – the infringement offences will all involve straightforward issues of fact that can be easily identified, and the associated penalties will be straightforward to administer.

What scope will options be considered within?

20. The scope for the options is set by the empowering provisions in the CMA, specifically sections 104 to 104K.

Infringement offences can only relate to requirements set in regulations made under the CMA

21. Section 104A of the CMA defines an infringement offence as one 'that is prescribed as an infringement offence against the regulations.' These may relate to breaches of requirements set in the CMA, associated regulations, or notices (made under the CMA).
22. Included in this scope are breaches of requirements that are yet to be set in regulations but that have received policy approval from Cabinet and are being developed [CAB-21-MIN-0547]. These are proposed regulations that relate to technical and financial information requirements for decommissioning.

The CMA provides for the maximum amounts of infringement fees and fines that can be set in regulations

23. Section 104J of the CMA sets the maximum amount for infringement fees and fines that can be set by regulation. The maximum amount of an infringement fee is \$1,000 for an individual and \$3,000 in any other case, and the maximum amount of an infringement fine is \$2,000 for an individual and \$6,000 in any other case.

What options are being considered?

24. MBIE has analysed options for:
 - i. infringement offences
 - ii. infringement fees
 - iii. infringement fines.

(i) Infringement offences

25. MBIE considered the following options for infringement offences to be prescribed in regulations:
 - **Option 1** – Status quo (no infringement offences are prescribed in regulations), OR
 - **Option 2** – creating four categories of infringement offences around the operation of permits (excluding decommissioning-related offences), OR
 - **Option 3** – creating four categories of infringement offences around the operation of permits and including new decommissioning-related offences.

Option 1 – Status Quo

26. Under the status quo, no infringement offences would be prescribed in regulations. This would mean that MBIE continues to lack effective tools to deal with low-level non-compliance. Many permit holders will continue to repeatedly fail to meet reporting deadlines or pay royalties late.

Option 2 – Four categories of infringement offences (excluding decommissioning-related offences)

27. Under this option, regulations would prescribe infringement offences against existing CMA obligations that generally fall into four categories:
- failure to comply with permit or land access requirements,
 - failure to submit information, records and reports within the time specified or by the due date,
 - failure to provide royalty returns and failure to pay royalties by the due date, or
 - failure to make required payments, such as annual fees, within the time specified or by the due date.
28. Under this option, infringement offences are prescribed only where there is evidence that non-compliance with reporting and other requirements in regulations is an existing problem (see Table 1 below).
29. Non-compliance with the first category of offences is harder to quantify as they do not relate to annual obligations, rather to ad-hoc breaches. Examples of non-compliance include individuals using a mechanical dredging apparatus in a river that formed part of a permit without permission of permit holder and a permit holder mining outside of their permit boundary without seeking an extension of boundary application. In both instances warnings were issued, but prosecution would be resource intensive and costly. The infringement offences proposed under this category have not been consulted on.
30. MBIE intends that these infringement offences will be implemented by the end of 2023 through regulation, to address non-compliance with the next annual royalties round at the end of March 2023. Late or incomplete payments would be identified following this date and followed up by the compliance team.
31. This option excludes decommissioning-related infringement offences, as the regulations with new decommissioning requirements following the Amendment Act are being developed, and therefore there is not yet data available on compliance levels.

Table 1: Average percentage of late submissions or payment instances grouped by each permit or licence category 2018-2020

Type of permit and licence	Late submission of annual summary reports	Late payment of royalties ³	Late payment of annual fees ⁴
Tier 1	13.78%	12.02%	13.58%
Tier 2	30.33%	11.08%	22.6%

³ 14 days or more past due date.

⁴ 14 days or more past due date – also note this covers all permit types (mining, exploration and prospecting).

32. MBIE consulted on the three categories of infringement offences in Table 1 above. Of the nine submitters, three were supportive of the proposed infringement offences. One submitter was supportive in principle of the introduction of infringement offences.
33. Five submitters disagreed with the introduction of infringement notices as a compliance tool, and in particular, one of those suggested that infringement offences were unnecessary for petroleum permit and licence holders (all Tier 1), on the basis that the petroleum industry already has a high level of compliance with reporting and payments.
34. However, our evidence suggests that non-compliance with royalty and annual fee requirements occurs for petroleum permit or license holders, at 10 per cent and 6 per cent respectively. Furthermore, late payment of royalties and annual fees by petroleum permit or license holders comes at significant cost to the Crown, both financially and in terms of administrative resources. Therefore, MBIE does not believe that there is a strong rationale for excluding petroleum permit holders from the proposed Tier 1 infringement offences.

Option 3 – Four categories of infringement offences including decommissioning-related offences

35. Under this option, infringement offences would include the offences from Option 2, as well as offences for failing to comply with certain decommissioning-related information, reporting or notification obligations. These obligations originate in amendments to the CMA that come into force from 1 December 2023. Policy decisions on the subsequent decommissioning regulations were approved by the Cabinet Economic Development Committee on 15 December 2021 [DEV-21-MIN-0269].⁵
36. The proposed decommissioning offences are laid out in Table 2 below, with a full list of proposed infringement offences provided in Annex Two.

Table 2: Proposed decommissioning related infringement offences

Source of the obligation	Proposed infringement offence
s 89ZF [from 1 December 2023]	Failure to submit a copy of the information prescribed in regulation 41A of the Crown Minerals (Petroleum) Regulations 2007 as relevant and reasonably necessary to enable the Minister to monitor one's financial position (including in relation to financial securities), within the prescribed time.
ss 89ZK(2) and 89ZK(3) [from 1 December 2023]	Failure to submit a copy of the information prescribed in regulation 37N of the Crown Minerals (Petroleum) Regulations 2007 as relevant and reasonably necessary to enable the Minister to carry out a financial capability assessment within the prescribed times or on request from the Minister, within any reasonable time specified in the request.
s 89ZF(4)(b) [from 1 December 2023]	Failure to provide a copy of further information considered relevant and reasonably necessary to the Minister within any reasonable time specified in the notice requiring information.

⁵ <https://www.mbie.govt.nz/dmsdocument/19341-crown-minerals-decommissioning-and-other-matters-amendment-act-2021-proposed-regs-relating-to-tech-financial-info-requirement-minute-of-decision-proactiverelase-pdf>

s 89ZK(5)(b) [from 1 December 2023]	Failure to provide a copy of further information considered relevant and reasonably necessary to carry out the financial capability assessment to the Minister required within any reasonable time specified in the notice.
s 89ZC(3) [from 1 December 2023]	Failure to supply further information relating to the decommissioning cost estimate within the time specified by the Minister.
s 89ZE [from 1 December 2023]	Failure to submit decommissioning completion report to the chief executive at the prescribed times (if any), within a specified time of the occurrence of prescribed events (if any), or within any reasonable time specified by the Minister in their request.
s 89ZL(2)(a) [from 1 December 2023]	Failure to advise the chief executive in the prescribed manner (if any), by a specified date, of the kind of security and the proposed amount to be secured as financial security.
s 89ZL(4) [from 1 December 2023]	Failure to provide information concerning financial security specified in the notice to the Minister within any reasonable time set out in the notice.
s 89ZM(3) [from 1 December 2023]	Failure to provide further information required to assist in determining the financial security to the Minister within any reasonable time specified in the notice.
s 89ZY(5) [from 1 December 2023]	Failure to provide specified information concerning post-decommissioning obligations to the Minister within any reasonable time specified in the notice.
s 89ZZ(3) [from 1 December 2023]	Failure to provide specified information required by the Minister to inform decommissioning funding decisions within any reasonable time specified in the notice.

37. The Discussion Document only proposed five offences relating to decommissioning information requirements in the then-Bill. Additional infringement offences then arose out of the legislative process for the Amendment Act and from submissions analysis on the in-development decommissioning regulations.
38. One submitter on the Discussion Document noted the difficulty of commenting on infringement offences relating to regulations that are under development. Cabinet approved the policy proposals for regulations relating to technical and financial information requirements for decommissioning in December 2021 [CAB-21-MIN-0547]. A majority of these information requirement regulations were also publicly consulted on in July-September 2021.

How do the options compare to the status quo?

	Option 1 – Status quo	Option 2 – Infringement offences (excl. decommissioning-related)	Option 3 – Infringement offences (incl. decommissioning-related)
Effectiveness	0	+	++
Proportionality	0	+	+
Regulatory certainty	0	+	+
Practicality	0	+	+
Overall assessment	0	4	5

Key:

- ++ much better than the status quo
- + better than the status quo
- 0 about the same as the status quo
- worse than the status quo
- much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Summary of ratings

39. Option 2 and Option 3 both score higher than the status quo. However, due to the higher potential cost to the Crown of non-compliance with decommissioning obligations MBIE recommends Option 3.

Options Analysis

40. Under the status quo (Option 1) the regulator, New Zealand Petroleum and Minerals (NZP&M), would not be able to issue infringement notices for low-level, straightforward breaches of requirements relating to permits and licences, and non-compliant behaviour would likely continue. In order to bring about behavioural change, NZP&M may need to resort to more serious action such as taking the matter to courts or seeking permit revocation, both of which would be disproportionate to the offence.
41. MBIE believes that both Option 2 and Option 3 would provide better outcomes the status quo and would enable the effective delivery of the Amendment Act. With infringement offences prescribed in regulations, NZP&M could respond to low-level breaches by issuing infringement notices and encourage behavioural change. The offences are proportionate – they all are associated with low-level breaches of requirements related to permits or licences under the CMA. They involve straightforward issues of fact and will be practical to administer. Both Option 2 and 3 prescribe offences in regulations that are clear and transparent to permit and licence holders and MBIE, providing for regulatory certainty.
42. **Option 3 is the recommended option** as it is considered to be more comprehensive, enabling low-level offences to be dealt with efficiently without escalation. This will ensure that permit holders comply with their decommissioning obligations when required, mitigating the risk that the Crown will have to pay for future remediation. MBIE considers that the high potential cost to the Crown as a result of non-compliance with decommissioning related offences justifies their inclusion in the infringement offence regime. As these decommissioning obligations are not yet in force, MBIE has not yet been able to gather evidence of non-compliance.

(ii) Infringement fees

43. A maximum level of infringement fees is set out in the CMA at \$1,000 for an individual and \$3,000 in any other case (i.e., a body corporate). MBIE considered the following options for infringement fees to be prescribed in regulations:

- **Option 1** – Status quo, OR
- **Option 2** – Flat infringement fee of \$1,000 for an individual and \$3,000 in any other case (i.e., a body corporate) for all offences and permit and licence tiers, OR
- **Option 3** – Infringement fee of \$500 for an individual and \$1,000 in any other case for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 in any other case for offences relating to Tier 1 permits.

Option 1 – Status quo

44. No infringement fees would be prescribed in regulations. Without fees being prescribed in regulations, it would not be possible for NZP&M to issue infringement fees.

Option 2 – Flat infringement fee of \$1,000 for an individual and \$3,000 in any other case for all offences and permit/licence tiers

45. Option 2 is based on the maximum level of fees provided for in the CMA. This could to disproportionately high infringement fees for Tier 2 permit holders, as the maximum fees set out in the CMA do not reflect the scale difference between permit tiers.

Option 3 – Infringement fee of \$500 for an individual and \$1,000 in any other case for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 in any other case for offences relating to Tier 1 permits

46. Option 3 would prescribe in regulations different fees for different permit and licence tier levels.
47. This option reflects the different scales of enterprise of Tier 1 and Tier 2 permit and licence holders. Permit operators under the CMA range from small hobby gold panners to multinational companies involved in petroleum extraction. For example, average annual royalties for Tier 1 petroleum permit/licence holders are \$1 million and for Tier 1 minerals permit holders are \$380,000. In comparison, for Tier 2 minerals permit holders, average annual royalties are \$11,000. Around 30 per cent of Tier 2 minerals permit holders pay less than \$1,000 in royalties. Tier 2 permits are typically held by individuals and so would face a \$500 fee for late submission.
48. This was the preferred option in the Discussion Document. Of the four submitters who were supportive in principle of the infringement offence scheme, three were supportive of the proposed infringement fees. They thought it provided reasonable nuance.
49. One submitter thought that the infringement fee for Tier 1 permit/licences in any other case (i.e., a body corporate) should be reduced to \$2,000 from \$3,000. In their opinion, this would reach an effective deterrent threshold, apply a consistent approach between individuals and body corporates for each tier level, and be affordable and appropriate. They also argued that the level of harm involved in offences such as the late filing of reports or failing to provide contact details is very low. MBIE disagree, as late filing or failure to provide contacts inhibits NZP&M's

ability to be an effective regulator, and to carry out their responsibilities under the CMA.

50. MBIE does not consider that the infringement fee would be an effective deterrent for Tier 1 body corporates if reduced to \$2,000. The level of harm involved can be significant, as the late filing of returns can make it difficult to detect more serious non-compliance such as fraud. If NZP&M does not receive the annual summary report or royalties return by the due date, it cannot compare the two for accuracy and confirm, for example, whether the quantity of gold recovered matches the royalty that was paid. The size of royalty return from Tier 1 permit or licence holders is much larger than that of Tier 2, therefore the potential financial loss to the Crown is higher. Due to the limit set in the CMA it is not possible to set a fee higher than \$3000 in regulations.

How do the options compare to the status quo?

	Option 1 – Status quo	Option 2 – Flat \$1,000 individual/ \$3,000 in any other case fee	Option 3 - \$500 individual/ \$1,000 in any other case fee for Tier 2; \$1,000 individual/ \$3,000 in any other case fee for Tier 1
Effectiveness	0	++	++
Proportionality	0	+	++
Regulatory certainty	0	+	+
Practicality	0	++	++
Overall assessment	0	6	7
Key:			
++ much better than the status quo			
+ better than the status quo			
0 about the same as the status quo			
- worse than the status quo			
-- much worse than the status quo			

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Summary of ratings

51. Option 2 and Option 3 both score higher than the status quo (Option 1). However, Option 3 has a marginally higher overall score as it provides a greater level of proportionality.

Options analysis

52. Under Option 1, NZP&M would not be able to issue infringement notices as the infringement fee must be prescribed in regulations and be contained in the notice. Consequentially, there would be no effective deterrent for the non-compliant

behaviour targeted by the infringement offences and NZP&M could resort to enforcement that is disproportionate to the offence.

53. Both Option 2 and Option 3 address the problem by prescribing infringement fees in regulations that would be straightforward to administer. This would provide for regulatory certainty by making it clear to permit and licence holders and the regulator what the likely consequence of non-compliance is.
54. Option 2 does not take into account any difference between the scale of offences relating to Tier 1 and Tier 2 permits and licences. For example, the impact on the Crown for the late submission of annual royalties from a Tier 1 permit or licence (average annual royalty \$1 million) is greater than from a Tier 2 permit or licence (average annual royalty \$11,000). While better than the status quo, the penalty for offences relating to Tier 2 permits or licences under Option 2 is disproportionate.
55. **MBIE recommends Option 3.** Prescribing a different level of fee for infringement offences relating to Tier 1 and Tier 2 permits and licences is the preferred option as the fee is set at a level that is proportionate to the offence.

(iii) Infringement fines

56. MBIE considers it desirable to give guidance to the courts, to provide certainty around expected outcomes of prosecution, which will improve incentives to comply with the Crown minerals regime. MBIE considered the following options for infringement fines to be prescribed in regulations:
 - **Option 1** – Status quo (no infringement fines are prescribed in regulations), OR
 - **Option 2** – Prescribe maximum infringement fines that are relative to the tier of permit/license held by the offending party

Option 1 – Status quo

57. No infringement fines are prescribed in regulations.
58. Under this option, the level of the fine will be left up to the discretion of the Courts. Courts issue infringement fines under the Summary Proceedings Act 1957 and the Criminal Procedure Act 2011. The Courts could be guided by the maximum fines for offences provided for in the CMA.

Option 2 – Relative maximum infringement fines based on tier of permit/license

59. Option 2 prescribes in regulations different fines for different tier levels. The level of prescribed maximum fine is twice the amount of the corresponding prescribed infringement fee for that tier. This means that for offences relating to Tier 1 permits and licences, the maximum infringement fine will be set at the maximum levels provided for in the CMA.

How do the options compare to the status quo?

	Option 1 – Status quo	Option 2 – Setting predictable maximum infringement fines based on tier of permit/license
Effectiveness	0	+
Proportionality	0	++

Regulatory certainty	0	++
Practicality	0	+
Overall assessment	0	6

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Summary of ratings

60. Option 2 scores higher than the status quo (Option 1), due to its greater provision of proportionality and regulatory certainty.

Options analysis

61. Under the status quo the Courts would be guided by the maximum fine amounts set in section 104J(b) of the CMA, \$2000 for an individual and \$6000 in any other case. A Tier 2 permit holder who failed to pay an infringement fee of \$500 could face a \$2000 fine, which would be disproportionate to the offence committed.
62. **Option 2 is the recommended option.** MBIE considers Option 2 to be better than the status quo as it provides for predictable and proportional outcomes for offending. The penalty for non-payment of the fee will be clear and transparent for all affected parties (permit and licence holders, MBIE, and the Courts). This assumes that the recommended option for infringement fees is pursued.

What are the marginal costs and benefits of all the preferred options?

63. MBIE considers the non-monetised costs and benefits of all the preferred options is low-medium.
64. The implementation of infringement offences is expected to improve compliance with the regulatory regime, including with new decommissioning requirements, as operators will have financial incentives to comply with low-level obligations. This will materially reduce long run costs to the Crown in terms of administration and potential future liabilities. However, the long run benefit of these cost savings is not quantifiable.
65. In the absence of reliable quantitative information, non-monetised cost and benefit impacts have been identified by taking into account submissions and considering other infringement offence regimes. Infringement notices are designed to be an administratively straightforward enforcement tool.

Affected groups <i>(identify)</i>	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			
Regulated groups (Minerals and Petroleum permit and licence holders)	Permit/licence holders will need to pay a fee on receipt of an infringement notice.	Low	High

	They may incur medium costs in contesting infringement notices. There may be a one-off cost to improve their internal systems to avoid future non-compliance.		
The regulator (New Zealand Petroleum and Minerals)	The regulator will incur a low, one-off cost in updating its policies and systems to include the new enforcement tool. There may also be ongoing low costs from monitoring and enforcing the infringement notices, and low legal costs for responding to contested infringement notices.	Low	Medium
Others (e.g., wider govt, consumers, etc.)	The Courts will likely incur minimal cost responding to contested infringement notices and enforcing the non-payment of fees with fines as these will be directed through an internal complaints review process.	Low	Low
Total monetised costs	Without accurate quantifiable evidence, it is not possible to provide an estimate.	Unknown	Unknown
Non-monetised costs	MBIE anticipates a low increase in overall costs.	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (Minerals and Petroleum permit and licence holders)	Regulated groups will benefit from improved compliance, which may in the long-term avoid more serious enforcement such as criminal proceedings or permit revocation.	Medium	Low
The regulator (New Zealand Petroleum and Minerals)	The regulator will benefit from improved permit/licence holder compliance, reducing resource costs and improving certainty around key reporting metrics such as the Crown's reserves.	Medium	Medium

Others (e.g., wider govt, consumers, etc.)	The Courts will benefit from improved compliance, with infringement notices being used in place of more resource-intensive enforcement.	Low	Low
Total monetised benefits	Without accurate quantifiable evidence, it is not possible to provide an estimate.	Unknown	Unknown
Non-monetised benefits	MBIE anticipates a medium level of benefits from improved compliance over the long-term.	Medium	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

66. As the regulator, NZP&M will be responsible for the implementation of the infringement notices. Administration of the infringement offence regime will be done by existing compliance staff within MBIE, meaning resourcing costs are expected to be minimal after the initial implementation period. Over time, if these proposals are successful in changing behaviour, MBIE anticipates that NZP&M resourcing will be able to be redirected to focus on higher-impact non-compliance activities.
67. NZP&M has an implementation project underway to operationalise the infringement notices and other new enforcement tools. This will include education about the compliance approach, published operational policies and improvements to the NZP&M website.
68. The proposed infringement offence regulations would come into effect after the decommissioning regulations are made in early 2023, with the infringement regime operational by mid-2023. Affected permit and licence holders will be notified via email, and NZP&M will continue to work to educate and assist permit and licence holders with their obligations. As most of these options were consulted on publicly in September-October 2021, permit and licence holders should be familiar with the proposals.
69. The Courts will be responsible for enforcing infringement notices, by imposing a fine in the event of non-payment of the infringement fee.
70. An identified implementation risk is that a large number of permit and licence holders will contest their infringement notices in Court, although MBIE assesses the likelihood of this occurring to be minimal. MBIE estimates that between 50 to 100 infringement notices will be issued in a year, with less than 10 of these expected to be related to decommissioning.
71. Submitters were concerned that the infringement notice did not allow for a right of appeal process. Once an infringement notice has been issued under the Summary Proceedings Act 1957 or a charging document filed under the Criminal Procedure

Act 2011, the matter can be challenged via the appeal processes provided in those Acts, that is, through the Court.

72. However, MBIE considers this risk to be low for two reasons. MBIE's internal complaints process enables enforcement decisions to be reviewed ensure that infringement notices are issued appropriately. Additionally, the proposed infringement offences involve straightforward issues of fact and are offences against existing requirements in regulations and similar-in-kind requirements in proposed regulations agreed to by Cabinet.

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

73. MBIE has a responsibility in its regulatory stewardship role to monitor, review and report on regulatory systems. The infringement notices will be recorded in the Investigation Case Management System alongside all other compliance interventions. Success would be measured by reduced rates of non-compliance, and fewer infringement notices being issued over time.
74. Non-compliance and the number of infringement notices issued will be assessed against the total number of permits as to provide a measure of behavioural change resulting from the implementation of infringement offences. The options taken on the infringement offence regime could be re-evaluated once sufficient data has been collected (e.g. after three years) on its effectiveness at changing non-compliant behaviour.
75. As required by the Ministry of Justice for all infringement offence regimes, MBIE will provide annual statistics on its use of infringement notices, the total number of permits and any trends identified.

Annex 1: List of consultation questions in the Infringement Offence Regulations Discussion Document 2021

Proposed infringement offences

- Do you agree with the infringement offences we have identified? If not, why not?
- Are there other infringement offences that you consider should be included? If so, please explain what they are and why.

Options for the infringement fee level

- Do you agree that these are the correct options to consider? If not, why not?
- Are there other options we have not considered? If there are, can you please elaborate?

Impact analysis for the infringement fee level options

- Do you agree with our impact analysis? If not, please explain

Preferred option for the infringement fee level

- Do you agree with our preferred option? If not, please explain.

Annex 2: List of proposed infringement offences

#	Source of obligation in the CMA	Infringement Offence
Relating to permits and access arrangements (in force from late-2023)		
1	Section 8(1)(a)	Prospecting, exploring or mining for Crown owned minerals without obtaining a permit or without the authorisation of the permit holder.
2	Section 8(1)(b)	Failure to comply with land access requirements.
3	Section 33(1)(a)(ii) Crown Minerals (Minerals other than Petroleum) Regulations 2007, regulation 38, and 39 Crown Minerals (Petroleum) Regulations 2007, regulations 38, 39, 40 and 41	Failure to supply annual report under a permit or licence to the chief executive by the due date, in the form prescribed, including the information prescribed in either: <ul style="list-style-type: none"> Part 8 or Part 9 of Schedule 4 of the Crown Minerals (Minerals other than Petroleum) Regulations 2007 for minerals permits. Part 1 or Part 2 of Schedule 6 of the Crown Minerals (Petroleum) Regulations 2007 for petroleum permits.
4	Section 33(1)(a)(ii) Crown Minerals (Minerals other than Petroleum) Regulations 2007, regulation 33 Crown Minerals (Petroleum) Regulations 2007, regulation 44	Failure to supply reports and records under a permit or license to the Chief Executive by the due date.
5	Sections 33(1)(a)(ii) and 33(1)(c) Crown Minerals (Royalties for Minerals other than Petroleum) Regulations 2013, regulation 44 Crown Minerals (Royalties for Petroleum) Regulations 2013, regulation 41	Failure to pay royalty under a permit or licence to the Crown by the due date.
6	Sections 33(1)(a)(ii) and 33(1)(c) Crown Minerals (Royalties for Minerals other than Petroleum) Regulations 2013, regulation 38 Crown Minerals (Royalties for Petroleum) Regulations 2013, regulation 35	Failure to provide royalty return under a permit or licence to the chief executive by the due date.
7	Section 33(1)(a)(ii) Crown Minerals (Minerals Fees) Regulations 2016, regulations 13 and 14 Crown Minerals (Petroleum Fees) Regulations 2016, regulations 10 and 11	Failure to pay annual fee under a permit or licence by the due date.
8	Section 42C	Failure to submit a complete notice of permanent cessation to the Chief Executive within 20 working days after cessation, or within any reasonable time specified by the Minister in their request.
9	Section 99F	Failure to provide any information specified in a notice under section 99F, within the time specified in the notice.

10	Section 95(4)	Failure to give written notification to the Chief Executive of change to the address or telephone number, under a permit or licence, within the time specified.
Decommissioning related offences (in force from 1 December 2023)		
11	Section 89ZF	Failure to submit a copy of the information prescribed in regulation 41A of the Crown Minerals (Petroleum) Regulations 2007 as relevant and reasonably necessary to enable the Minister to monitor one's financial position (including in relation to financial securities), within the prescribed time.
12	Sections 89ZK(2) and 89ZK(3)	Failure to submit a copy of the information prescribed in regulation 37N of the Crown Minerals (Petroleum) Regulations 2007 as relevant and reasonably necessary to enable the Minister to carry out a financial capability assessment within the prescribed times or on request from the Minister, within any reasonable time specified in the request.
13	Section 89ZF(4)(b)	Failure to provide a copy of further information considered relevant and reasonably necessary to the Minister within any reasonable time specified in the notice requiring information.
14	Section 89ZK(5)(b)	Failure to provide a copy of further information considered relevant and reasonably necessary to carry out the financial capability assessment to the Minister required within any reasonable time specified in the notice.
15	Section 89ZC(3)	Failure to supply further information relating to the decommissioning cost estimate within the time specified by the Minister.
16	Section 89ZE	Failure to submit decommissioning completion report to the chief executive at the prescribed times (if any), within a specified time of the occurrence of prescribed events (if any), or within any reasonable time specified by the Minister in their request.
17	Section 89ZL(2)(a)	Failure to advise the chief executive in the prescribed manner (if any), by a specified date, of the kind of security and the proposed amount to be secured as financial security.
18	Section 89ZL(4)	Failure to provide information concerning financial security specified in the notice to the Minister within any reasonable time set out in the notice.
19	Section 89ZM(3)	Failure to provide further information required to assist in determining the financial security to the Minister within any reasonable time specified in the notice.
20	Section 89ZY(5)	Failure to provide specified information concerning post-decommissioning obligations to the Minister within any reasonable time specified in the notice.
21	Section 89ZZ(3)	Failure to provide specified information required by the Minister to inform decommissioning funding decisions within any reasonable time specified in the notice.