

Coversheet: New Zealand Emissions Trading Scheme Compliance and Penalties – Infringement Offences

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| Advising agencies | Ministry for the Environment |
| Decision sought | Approval |
| Proposing Ministers | Hon James Shaw, Minister for Climate Change |

Summary: Problem and Proposed Approach

Problem Definition

Criminal penalties are the only available penalties for a number of low-level offences against the rules relating to the New Zealand Emissions Trading Scheme (NZ ETS) contained in the Climate Change Response Act 2002 (CCRA). Criminal penalties are rarely used by enforcement agencies, due to the significant costs involved with pursuing prosecution. Attempts to deter low-level offending by issuing warning notices to offenders and by educating NZ ETS participants on meeting their obligations have not succeeded in reversing trends of non-compliance. Some NZ ETS participants have become repeat low-level offenders and continue to contravene the rules of the NZ ETS without sanction.

A high level of non-compliance erodes the integrity of the NZ ETS and dissuades participants from taking the necessary care to ensure compliance with their obligations. If the NZ ETS is not functioning as intended, the Government’s ability to meet domestic and international climate change targets and obligations could be compromised. The strength and effectiveness of the NZ ETS compliance system is also of interest to other carbon market regulators and important to discussions on linking those markets.

Proposed Approach

The Government proposes to replace some criminal offences with a suite of infringement offences for low-level administrative non-compliance with the rules of the NZ ETS.

Infringement offences will be responded to either with an infringement fee or fine. Maximum infringement fees will equate to \$2000 for a body corporate, and \$1000 for an individual. Maximum infringement fines (which are issued by a Court will total \$6000 for a body corporate and \$3000 for an individual. The distinction between individuals and body corporates is consistent with other provisions in the CCRA, for example in section 131.

The CCRA will be amended to empower the creation of infringement offences, with the detail of the new offences specified in regulations. The new regime is expected to be in place from 1 January 2020.

The infringement regime will allow enforcement agencies to take action against low-level offenders, particularly repeat offenders, without needing to expend significant financial and human resources in pursuing prosecution.

Infringement offences will replace sections 129, 131, 259 and 260 of the CCRA. Offence sections will remain for more serious non-compliance, including knowing failures and wilful non-compliance under section 132 and intentional non-compliance under section 133. In effect there will be an “escalation pathway” to bridge the gap between the more lenient option of warnings and education, and the more heavy-handed option of prosecution. Although it is likely that a large number of infringement notices will be issued in the short-term in response to ongoing non-compliance, the imposition of appropriate infringement offences is expected to significantly improve compliance rates over time.

The infringement offence option is preferred to other options as it aligns best with the operational criteria for assessing proposals to improve the NZ ETS, specifically: integrity, minimal complexity and administrative cost, consistency and proportionality, clarity and transparency, and market efficiency.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

- Compliant NZ ETS participants: greater sense of trust in the scheme; increased willingness to take the necessary care to ensure that obligations are met.
- Non-compliant NZ ETS participants: although non-compliant participants will be required to pay a fee or fine, they will not be convicted of an offence and will not be able to be prosecuted for the particular incident. They will also avoid paying higher financial penalties under a prosecution.
- Enforcement agencies: reduced costs spent on enforcing the scheme in the long-term; more time freed up to proactively work with NZ ETS participants and to prioritise compliance activity to sanction the most serious offending.
- Judiciary: avoidance of potential work and the considerable time involved in dealing with any additional prosecutions brought under the CCRA.
- General public: improving the integrity of the NZ ETS will help New Zealand’s progress on meeting its domestic and international emissions reduction targets and obligations. The Government’s climate change response, including the proposed improvements to the NZ ETS, is expected to benefit all New Zealanders over time.

Where do the costs fall?

- Enforcement agencies: in the short-term, agencies will be required to update policies and existing systems to implement the infringement regime. In the case of one agency, this may involve reactivating an existing system.
- Non-compliant NZ ETS participants: these participants, where penalised, will be required to pay infringement fees or fines. In the long-term, it is expected that participants will take greater care to ensure that they are meeting their obligations.
- Parliament: it will be necessary to amend the CCRA in order to introduce empowering provisions which will enable the implementation of infringement offences. Regulations will need to be passed to set out the additional detail about the new offences and penalties. This amounts to an opportunity cost for the House given Parliament’s time constraints.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

If the infringement offence penalties are not set an appropriate level, compliance will not be assured and NZ ETS participants may simply chose to, for example, deliberately miss a due date and then pay the necessary fee or fine, rather than comply from the outset. This risk would be mitigated by ensuring the fees and fines are set at a high enough level to disincentivise non-compliance.

If the infringement fees and fines are set too high, voluntary NZ ETS participants may decide that the opportunity costs are too high, and leave the scheme. High penalties would be out of proportion to the seriousness of the offence. This is a low risk given that enforcement agencies have already worked with the Ministry of Justice (MoJ) to ensure that fees and fines are set at an appropriate level.

If enforcement action is taken too readily by agencies, the infringement regime may be perceived as a revenue gathering regime for Government. This risk will be mitigated by developing a thorough communications programme to ensure NZ ETS participants are well educated about their obligations and consequences of non-compliance. Furthermore, the infringement regime will provide that revenue gathered from fees and fines is returned to the Crown, rather than to the enforcement agencies. This way, there is no unintended consequence of incentivising agencies to impose fees and fines more than is necessary.

In addition, it can be pointed out that one driver for the Government to implement an infringement offence regime was to reduce costs to NZ ETS participants as well as to taxpayer-funded agencies. The Government could also emphasise the importance to New Zealand's international climate change obligations of ensuring that the rules of the NZ ETS can be enforced in practice.

Finally, a disadvantage of introducing infringement offences is that compliance decisions are not public decisions with their associated deterrent effect. However, our market information work programme is assessing the costs and benefits of the increased publication of non-compliance information. Relevant decisions will be made in March 2019.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The proposal outlined in this Impact Statement is consistent with the Government's 'Expectations for the design of regulatory systems'.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Very confident. The relevant enforcement agencies, the Environmental Protection Authority (EPA) and Ministry for Primary Industries (MPI) keep records of instances of non-compliance and have records of the prosecutions brought under the CCRA on file.

Infringement offence regimes are an established part of the criminal justice system and are commonly used across the public sector, including in the environmental sector under the Resource Management Act 1991. Infringement offences are empowered, but have not yet been used, under the Hazardous Substances and New Organisms Act 1996. A Bill to implement an infringement system for offences against the Conservation Act 1987 is

currently with the Environment Select Committee. We are confident in our estimation of the likely costs and benefits of moving to this regime.

Given that many other agencies have infringement offence regimes in place, we are able to readily estimate the costs that would be encountered by the EPA and MPI in transitioning to this regime.

We are moderately confident of the implementation costs that have been indicated. These costs have been based on similar regimes across the public sector. More detailed costings have not been possible due to the commercially sensitive nature of the NZ ETS preventing detailed design analysis with third parties.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Treasury

Quality Assurance Assessment:

A Quality Assurance Panel with representatives from the Ministry for the Environment and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "Impact Statement: New Zealand Emissions Trading Scheme Compliance and Penalties – Infringement Offences" produced by the Ministry for the Environment and dated November 2018. The panel considers that it meets the Quality Assurance criteria.

More detail on the assessment of this and the other RIAs can be found at: [link to be added].

Reviewer Comments and Recommendations:

Impact Statement: New Zealand Emissions Trading Scheme Compliance and Penalties – Infringement Offences

Section 1: General information

| Purpose |
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| Ministry for the Environment (the Ministry) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet. |

| Key Limitations or Constraints on Analysis |
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| <p>We are confident with our scoping of the problem, the reliable evidence base, the broad range of options considered, the criteria used to assess the options and the underlying assumptions and quality of data.</p> <p>One limitation is that, although the Ministry consulted on the proposal to introduce infringement offences as part of the broader consultation on improvements to the NZ ETS, we did not provide submitters with alternative options for comparison. Had we listed other options that had been considered, we may have received more diverse responses. However, given that the consultation document contained a relatively high number of questions (37), some of which were of a highly technical nature, it was felt unnecessary to provide multiple alternative options for every proposal under consideration.</p> <p>We also note that, when responding to the consultation questions on forestry proposals, submitters were asked to consider a large amount of technical information. This may have dissuaded some individuals or organisations from submitting and limited the accessibility of the consultation round.</p> <p>Three matters are outside the scope of this proposal.</p> <ol style="list-style-type: none">1. The allocation of liability for non-compliance. This means that the ultimate liability for meeting obligations under the CCRA rests with the participant, regardless of whether the participant used an agent to meet its obligations. This approach may be impacted on decisions made in the market governance workstream emerging from the response to the 2015/16 NZ ETS review.2. A review of the CCRA's limitation periods for commencement of proceedings.3. Greater publication of non-compliance, as a means to encourage a culture of compliance. The ability to publish compliance information, especially at an individual level, will depend on decisions in the market information work programme. |

Responsible Manager (signature and date):



Matthew Cowie

Manager – Climate Change Policy

Climate Change Directorate

Ministry for the Environment

Date:

22/11/18

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Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

New Zealand's Climate Change Response

The New Zealand Emissions Trading Scheme (NZ ETS) was established in 2008 through an amendment to the Climate Change Response Act 2002 (CCRA). The purposes of the NZ ETS is to reduce New Zealand's greenhouse gas emissions below business as usual levels and to meet international climate change obligations under the Kyoto Protocol and the United Nations Framework Convention for Climate Change.

Emissions trading is a market-based approach to reducing greenhouse gases. Participants in the NZ ETS gain New Zealand Units (NZUs) for activities resulting in carbon sequestration, exporting emissions or from carrying out particular emissions-intensive and trade-exposed activities. Other participants are required to surrender units for specified activities. Just over half of New Zealand's greenhouse gas emissions are covered by NZ ETS surrender obligations.

The Paris Agreement provides a new international context for New Zealand's action on climate change. New Zealand's domestic response has strengthened and the proposed Zero Emissions Bill aims to provide an enduring framework for the transition to a low-emissions and climate-resilient New Zealand. Through its Nationally Determined Contribution (NDC), New Zealand has committed to reduce greenhouse gas emission by 30 per cent below 2005 levels by 2030. The NZ ETS will be a key tool to help deliver our NDC and future NDCs, as well as to make a successful domestic transition to a low emissions future.

2015/16 Review of the NZ ETS

In 2015, the Government launched a review of the NZ ETS. The Government wanted to ensure that the scheme was helping New Zealand meet its international obligations. It also wished to investigate whether the NZ ETS was helping the New Zealand economy be well-prepared for a strengthened international response to climate change, and whether the NZ ETS could evolve with changing circumstances, particularly following the Paris Agreement.

The review, which was conducted in two stages and concluded in mid-2017, identified several problems with the scheme. It identified that the Government does not have the tools to effectively manage the supply of units into the market, that there is significant regulatory uncertainty for participants and that technical and operational features are causing administrative inefficiencies.

The NZ ETS compliance and penalties regime was identified as needing improvement. It was found that compliance with NZ ETS obligations was generally high, but that on an annual basis, some participants were not meeting their mandatory registration, emissions reporting, surrender, or repayment requirements. This includes participants:

- failing to register or deregister for mandatory activities;
- failing to notify the relevant agency after ceasing an activity for which an allocation is received;
- submitting emissions returns that contain incomplete or incorrect information;
- missing due dates for submitting a return, surrendering or repaying units;

- failing to comply with field measurement approach regulations for forestry.

Consultation on Improvements to the NZ ETS

In August and September 2018, the Ministry conducted a public consultation to seek feedback on a range of proposals designed to improve the NZ ETS. These proposals responded to the findings of the 2015/16 review. A separate discussion document was released by MPI containing proposals for improvements to forestry included in the NZ ETS.

One section of the Ministry's consultation related to proposals to improve the NZ ETS compliance and penalties regime. The consultation content and questions related to two separate proposals. The first concerned the proposal to replace criminal offences with infringement offences in the compliance and penalties regime, and the second concerned the proposal to change the \$30 per unit civil 'excess emissions penalty' which applies where a person misreports their emissions, or fails to surrender or repay units by the due date. The consultation also asked questions regarding market governance and market information, including whether or not information on non-compliance should be published.

The work required to address all NZ ETS improvements has been split into two separate sets of decisions to be presented to Cabinet in December 2018 and March 2019 respectively. The main reason for this is that all legislative change to the CCRA is required to be done by the end of 2019. In order to meet this deadline, a significant set of decisions that require legislative change are being put forward in December to enable drafting to begin prior to Christmas. For compliance and penalties, market information and market governance the decisions included in each set of proposals are as follows:

December 2018 cabinet paper: Amendments to the Climate Change Response Act 2002: tranche one:

- Compliance and Penalties: New Infringement Regime (this FIS)
- Market Governance early decisions - Prohibiting insider trading and market manipulation in the New Zealand Emissions Trading Scheme (separate RIA)

March 2018 cabinet paper: Amendments to the Climate Change Response Act 2002: tranche two:

- Compliance and Penalties: Changes to the Excess Emissions Penalty (Administrative penalties)
- Market Information: any further proposals on publication of information relating to market participants
- Market Governance: further proposals on market governance, including decision on regulator

All decisions will result in one set of changes to the CCRA, scheduled to be presented to Parliament in mid-2019.

2.2 What regulatory system, or systems, are already in place?

The NZ ETS Compliance and Penalties Regime

The purpose of the compliance and penalties regime is to maintain the NZ ETS' integrity by:

- increasing incentives for due caution when undertaking obligations;

- deterring non-compliant actions and behaviours;
- ensuring that penalties are applied using a process based on the principles of natural justice that provides for equitable treatment of participants;
- ensuring penalties, and their application, are easy to understand, predictable, and transparent for participants and the public;
- ensuring the compliance and penalties regime is sufficiently robust to allow for international linking (trading units between different emissions trading schemes).

The objectives of the compliance and penalties regime sit within the overall objectives of the recent review of the NZ ETS. Improvements made to the NZ ETS as a result of this review and the recent consultation round should:

- allow the NZ ETS to evolve with changing circumstances, particularly with regard to the framework provided by the Paris Agreement;
- ensure that the NZ ETS helps New Zealand to meet its international obligations cost effectively;
- ensure that the New Zealand economy is well-prepared for the strengthening international response to climate change and potentially higher carbon prices.

Relevant Provisions of the CCRA

Part 4, subpart 4 of the CCRA (sections 129 to 143 inclusive) sets out a number of criminal and civil offences and penalties for failing to comply with the CCRA's provisions relating to the NZ ETS. For example, it is an offence to have failed to submit an emissions return when required to do so. The potential penalties differ depending on whether the offence is considered to have occurred without reasonable excuse, as a knowing failure, or with the intent to deceive. Part 7, subpart 3 of the CCRA contains similar criminal offences with respect to the Synthetic Greenhouse Gas levy.

Enforcement agencies

Enforcement of the NZ ETS is carried out by the Environmental Protection Authority (EPA) and Ministry for Primary Industries (MPI). MPI administers the forestry aspects of the NZ ETS under authority delegated from the EPA.

2.3 What is the policy problem or opportunity?

Low-level Non-compliance with the NZ ETS Goes Unsanctioned

At present, if a participant to the NZ ETS commits even a low-level offence such as missing a deadline to submit a return, the only options available to the enforcement agencies are issuing warnings and educating the offender, or issuing a charging document to pursue prosecution in the Courts.

Enforcement agencies issue warnings to NZ ETS participants to encourage greater compliance, and they educate participants on their obligations through information on their websites and through targeted communications. However, these non-regulatory tools have been ineffective in deterring low-level non-compliance over the long-term.

Pursuing prosecution is expensive and time-intensive for enforcement agencies and participants. This response may appear disproportionate to the level of offending and risk

eroding participants' trust in the administration of the NZ ETS. In addition, enforcement agencies cannot normally demonstrate that it would be in the public interest to prosecute low-level non-compliance. There have been just three successful prosecutions occurring since the scheme's inception, but there are hundreds of instances of low-level offences per annum.

Evidence of Non-compliance with the NZ ETS

Since 2008, 71% of notifications for the deforestation of pre-1990 forest land have not been completed within the required timeframes. The non-compliance rate for notifying transfers of participation within the required timeframes exceeded 92%.

Compliance rates have not improved across the board over time. Increased compliance rates in the 2016 period have been attributed to the high level of engagement around the launch of the new New Zealand Emissions Trading Register. However, compliance levels soon tapered off again throughout 2017.

Whilst meeting obligations under the NZ ETS can be complicated for participants, enforcement agencies work closely with participants to help them to understand and meet these requirements. Enforcement agencies proactively engage with participants to ensure they are aware of their obligations, the main timeframes and deadlines, and expectations around compliance. Reviews are conducted by the enforcement agencies to ensure that various information and reporting requirements have been met.

Risks of Permitting Ongoing Low-level Non-compliance

Permitting ongoing low-level non-compliance with statutory requirements under the CCRA undermines the integrity of the NZ ETS. It normalises non-compliance and encourages participants to take an overly relaxed approach to their obligations. As a result, some participants have engaged in repeat offending. With agencies not pursuing prosecution, and no alternative enforcement options available to agencies, the only consequence faced by repeat offenders is the receipt of warning letters, which do not have immediate financial implications and so do not carry the same weight as other statutory tools. Repeated non-compliance by a large number of participants suggest that the current system is not working.

Infringement Offences Provide an Opportunity to Improve the Integrity of the NZ ETS

We propose to introduce a suite of infringement offences which will provide enforcement agencies with an effective intermediate action to address low-level non-compliance. Infringement offences will act as an "escalation pathway" and sit between the two existing options of issuing non-regulatory warnings or pursuing prosecution.

Infringement offences will be responded to either with an infringement fee or fine. Maximum infringement fees will equate to \$2000 for a body corporate, and \$1000 for an individual. Maximum infringement fines will total \$6000 for a body corporate and \$3000 for an individual. Revenue gathered from issuing fees and fines will be returned to the Crown's accounts. The individual infringement offences that we are proposing, and their associated fees and fines, are set out in full in **Appendix 1**.

Infringement offences are a type of strict liability offences which do not require enforcement agencies to prove the mental element of the offence. This reduces the evidential burden on enforcement agencies. Infringement offences result in financial penalties, but not convictions.

The infringement offence regime will be authorised in primary legislation, via amendment of the CCRA, and the detail of the regime will be detailed in regulations to follow. The regulations will specify, the act or omission which constitutes the offence, the required contents of the infringement notice and reminder, and associated penalties.

Section 21 of the Summary Proceedings Act 1957 sets out the generic procedure for infringement offences in New Zealand. It specifies the timeframes for recipients to pay, to initiate a pay-over-time arrangement, particulars of reminder notices, when reminder notices should be filed with the District Court, and how to request a hearing.

The offending NZ ETS participant may challenge their infringement fee or fine through the process established in the Summary Proceedings Act section 21. The legislation will clarify that section 21 of the Summary Proceedings Act will prevail over the CCRA review and appeal process.

The Difference between Infringement Fees and Fines

Infringement offences are split into infringement fees and infringement fines. Infringement fees are issued by notice directly to the non-compliant participant, whereas infringement fines are issued through the Court by the enforcement agency filing a charging document. This two pronged approach to infringement offences means that the response to low-level non-compliance, such as repeatedly missing deadlines, can be appropriately escalated.

Infringement fees are issued and paid without recourse to the Court, thereby lessening the time and resource pressures on both enforcement agencies and offending participants. Non-compliant participants will receive a financial penalty that was appropriate to the gravity of the offence they have committed. The inconvenience of paying this fee will reflect the value assigned to properly complying with statutory obligations, and it is expected to encourage participants to comply without needing to be prompted.

Infringement fines exist to address more serious, but still low-level, non-compliance. Fines are issued through the Court, demonstrating an escalated response to offending. The use of the judicial process ensures that judicial oversight is provided in seeking a higher penalty for behaviour which is considered more serious, for example, offending which is repetitive.

Use of Infringement Offences across the Public Service

Infringement offences are commonly used across the New Zealand public sector to target low-level non compliance. For example:

- Under the Resource Management Act 1991, a Council may serve an infringement notice where an infringement offence has been committed, as an alternative to criminal proceedings.
- Under the Civil Aviation Authority Act 1990 and its 2006 regulations, infringement fees are available at a range of levels, depending on the offence.

- Under the Building Act 2004 and its 2007 regulations, infringement fees from \$250-\$2000 can be issued.
- Under the Health and Safety at Work Act 2015 and its 2016 regulations, the regulator may issue an infringement notice to a person if the regulatory believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- Under the Financial Markets Conduct Act 2013, the Financial Market Authority has the power to issue infringement notices to the directors of reporting entities.
- Under the Gambling Act 2003, a gambling inspector or constable may issue an infringement notice where there are reasonable grounds to believe that the person is committing, or has committed, an infringement offence.
- When a company fails to register audited financial statements with the Registrar of Companies within the prescribed time, the Registrar can issue each director of that company with an infringement notice and fee.

2.4 Are there any constraints on the scope for decision making?

The following areas are related to the proposal to introduce an infringement offence regime, but out of scope of the decisions to be made in this analysis:

Increased Publication of Compliance Information

Regulators are currently unable to publish NZ ETS non-compliance information due to the obligation to maintain confidentiality under section 99 of the CCRA. However, the increased publication of compliance information, including information relating to the performance of NZ ETS participants on an individual basis, could potentially be used as a compliance tool. Intervening early on aligns with the approach articulated in the OECD's information note (published by the Forum on Tax Administration) *Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises*. Greater publication of the sanctions received by offenders can shape norms and build a culture of compliance.

The ability of enforcement agencies to publish compliance information, especially where this involves an individual's data, will depend on decisions made regarding the provision of market information. Proposals to improve the availability of market information were outlined in the recent consultation document *Proposed Improvements to the New Zealand Emissions Trading Scheme*. This area is still under consideration and will be reported separately as outlined in section 2.1 above.

Liability and Limitation Periods

The allocation of liability for non-compliance is outside the scope of this proposal. This means that the ultimate liability for meeting obligations under the CCRA rests with the participant, regardless of whether the participant has used an agent to meet their obligations. This approach may be impacted by decisions made in the market governance work stream.

Similarly, a review of the limitation periods for commencement of proceedings contained in the CCRA has not formed a part of this proposal.

Excess Emissions Penalty

In addition to criminal penalties, the CCRA contains a number of civil penalties. A civil penalty of \$30 per unit, called the excess emissions penalty, applies where participants incorrectly report their emissions, or fail to surrender or repay units by the due date. Non-compliant participants must still surrender or repay the outstanding units as well as paying the excess emissions penalty per outstanding unit. This penalty has been found to not be operating appropriately, and is covered by a separate Impact Statement as this work will be part of the second tranche of ETS improvements going to cabinet in March 2019.

The proposed infringement offence regime will form part of the wider NZ ETS compliance and penalties regime, including the proposal to replace the excess emissions penalty with administrative penalties (proposals due to cabinet in March 2019). All these proposals will work together to achieve the objectives of the NZ ETS compliance and penalties regime (refer section 2.1 for overview).

Review and appeal

The current provisions of the CCRA provide a process for decisions made under Parts Four and Five to be reviewed and appealed. A person affected by a decision made by the EPA may request the EPA to review the decision, appeal to the District Court, and appeal to the High Court (on questions of law). However, as outlined above in section 2.3, the Summary Proceedings Act 1957 will apply to the administration of infringement offences.

2.5 What do stakeholders think?

Stakeholders are NZ ETS participants, including corporates, industry bodies, iwi and Māori organisations, and individuals. Stakeholders also include non-participants who have an interest in the proper functioning of the NZ ETS, such as community and non-governmental organisations.

Consultation on Proposed Improvements to the NZ ETS

Throughout August and September 2018, the Ministry and MPI publicly consulted on a package of proposed improvements to the NZ ETS. 253 submissions were received.

Two consultation questions are relevant to this proposal:

- Question 22: *Do you agree with the proposal to introduce strict liability infringement offences for low-level non-compliance?*
- Question 23: *What are your views on the levels of the proposed fines?*

Submitters' Responses

Most submitters who answered Question 22 were comfortable with the proposed introduction of infringement offences, noting that this would incentivise good behaviour and provide fairness and consistency between participants. Submitters generally believed that prosecution was inappropriate for low-level non-compliance and supported the introduction

of strict liability infringement offences. However, a small number of submitters believed that warnings were sufficient and that only wilful non-compliance should be sanctioned.

Most submitters who answered Question 23 were comfortable with the proposed level of the fines. Submitters believed that fines needed to be high enough to have a deterrent effect. There was some support for a proportional approach to setting penalties.

Impact on Māori and iwi

Any changes made to the NZ ETS will impact on Māori and iwi participants. Public consultation meetings were held during the consultation period in main cities and regional centres. In addition, an engagement hui was held with Māori and iwi representatives along with staff from MPI and the Ministry in September 2018. Representatives were clear that the impacts on Māori should be taken into account when developing proposals, and that Māori should be involved and influential in decision-making. Māori seek to increase, grow and accelerate the value of their investments, and stable and enduring policies are required to support investment decisions. No specific comments on the proposed infringement offence regime were provided.

Consultation with Other Agencies

The Ministry worked closely with the EPA and MPI to develop this proposal, while also consulting with MoJ. All three agencies were satisfied with the proposal and MoJ advice was followed when setting the proposed levels of fees and fines.

Section 3: Options identification

3.1 What options are available to address the problem?

Six main options have been considered. These are:

1. the status quo;
2. greater use of criminal sanctions;
3. extension of existing alternative penalties;
4. per day penalties;
5. civil pecuniary penalties;
6. infringement offences (preferred option).

1. *Status Quo*

Key features: At present, enforcement officers may issue warning notices to participants who engage in non-compliance. Although they have the option of pursuing prosecution, enforcement agencies have typically determined that the public interest in doing so for low-level offences is outweighed by the financial, time, and opportunity costs to agencies.

Addressing the problem: The potential for prosecution may serve to deter non-compliance. Warning notices may spur some low-level offenders on to full compliance, but they have been shown to be unsuccessful in significantly reducing low-level offending.

2. *Greater Use of Criminal Sanctions*

Key features: Enforcement agencies could make greater use of the existing criminal offence provisions under the CCRA. This will result in a high number of proceedings being brought before the Courts.

Addressing the problem: This action will likely achieve the objective of deterring non-compliance. However, it will do so at a high cost to both enforcement agencies and NZ ETS participants. Enforcement agencies will be required to divert financial and human resources towards prosecution efforts. NZ ETS participants will also experience high costs connected with defending a prosecution. Moreover, the judiciary will also need to contend with a higher caseload.

The compliance and penalties regime may lack integrity as the approach taken by enforcement agencies could be viewed as heavy-handed. This might discourage potential new participants from voluntarily signing up to the NZ ETS. It might cause overall dissatisfaction with the NZ ETS and lead to disapproval of other potential changes to improve the scheme.

3. Extension of Existing Alternative Penalties

Key features: This option foresees the architecture of the current compliance and penalties regime remaining largely unchanged, with some elements being improved to encourage greater compliance. The penalty assessment and per unit penalty approach will be extended to a wider array of non-compliant behaviours.

Addressing the problem: The existing per-unit excess emissions penalty could be extended to deal with a greater number of offences. This will introduce a scalable penalty for non-compliance, with a higher level of discretion for enforcement agencies. However, applying per-unit penalties will lack relevance for a number of the offences intended to be covered. Voluntary participants might stop undertaking activities with NZ ETS obligations, or stop participating in the NZ ETS altogether, if there is a risk that they will be exposed to high penalties created by the existing per-unit penalties. In addition, the existing per-unit penalties are problematic and are proposed to be replaced by administrative penalties.

4. Per Day Penalties

Key features: Penalties could change depending on the length of time a participant had been non-compliant. These penalties could be charged in units or dollars, and an initial quantum of units on which to base the penalty would not be required.

Addressing the problem: Per day penalties would successfully capture low-level administrative non-compliance. However, the penalty would need to accumulate at a significant enough rate to become an effective deterrent. Yet if penalties reached an excessive level, it would have a disproportionate impact on NZ ETS participants, many of whom are small businesses. Moreover, the option could be regarded as fair and proportionate, but it might require a high level of administrative support given that every instance of non-compliance would be unique. Clear decisions would be required around when an instance of non-compliance was found to begin and end.

5 Civil Pecuniary Penalties

Key features: Civil pecuniary penalties are monetary penalties imposed by the Court. Enforcement agencies lay charging documents, and the Court imposes a penalty after considering factors such as the level of harm caused by the offending, and the offender's ability to pay. The standard of proof required is on the balance of probabilities.

Addressing the problem: This approach will allow for judicial discretion to be exercised. However, it is considered that the use of civil pecuniary penalties will have similar drawbacks to the current regime, in that both need to be enforced through the Courts.

6 *Infringement Offences*

Key features: A set of strict liability infringement offences could be introduced to combat low-level non-compliance. They could be drafted in such a way as to maintain the high-end sanctions which currently exist, but to also deal with low-level offending which is not currently being sanctioned.

Addressing the problem: Infringement offences are administratively simple for both enforcement agencies and participants to administer. Introducing infringement offences may also help to reduce the Courts' workload if these low-level compliance matters are dealt with by enforcement agencies.

Infringement offences treat participants proportionately, contributing to the regime's consistency and transparency. However, the impact of infringement fees and fines are different for each participant, with the impact determined by factors such as the participant's size and chosen operating model. The strict liability nature of the offence does not take into account the reasonableness of any particular non-compliance. Strict liability notwithstanding, an enforcement agency can exercise discretion not to issue a fee in exceptional circumstances.

Impact of Consultation on these Options

The results of consultation showed that most submitters supported the proposal to introduce infringement offences to the NZ ETS. Some submitters requested that serious offending, particularly if intentional, should remain prosecutable. Submitters not supporting the proposal were concerned that the introduction of a strict liability infringement regime would not allow decision makers to apply discretion, especially in cases of reasonable error.

Consultation has confirmed that the policy rationale is sound. Submitters in support of the proposal recommended that fines be set at a level that encourages compliance without being disproportionate.

Combinations of Options

Most of the options are mutually exclusive, though it is possible to pair increased publication of non-compliance with any of the other options.

Consideration of Non-regulatory Options

The option of increased publication of non-compliance is under consideration as an aspect of the wider market information work. The options of continuing with the status quo or

increasing the use of criminal offences would not require the passage of any new regulations.

Relevant International Experience Considered

The Ministry and the EPA investigated the tools available in penalty regimes operating in all other emissions trading schemes. This included the regimes operating in the European Union, United Kingdom, Poland, Switzerland, California, Ontario and Quebec, US states falling under the Regional Greenhouse Gas Initiative, The Republic of Korea, Kazakhstan, Tokyo, and the seven pilot schemes operating in the People's Republic of China.

A wide variety of tools are used across international emissions trading schemes to penalise non-compliant behaviour. Most schemes make use of civil penalties, even for low-level non-compliance. This may occur through fixed-fee penalties, penalties based on a per unit or per day calculation, or submission of additional units. Many schemes have further penalties for non-compliance, such as prison sentences for individuals, including company directors. Publication of non-compliant entities is used in a number of international schemes.

Ultimately, given that the NZ ETS is unique in some key aspects (such as having a broad level of participation across the whole economy), it was determined that the experience of other jurisdictions should not overly influence decisions made about the NZ ETS. At the same time, it is noted that compliance system robustness and stringency is of high importance in discussions with other carbon market regulators about linking schemes.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Five operational assessment criteria have been developed to evaluate proposed improvements to the NZ ETS, including the compliance and penalties regime. These are:

1. integrity;
2. minimal complexity and administrative cost;
3. consistency and proportionality;
4. clarity and transparency;
5. market efficiency.

Integrity

The compliance and penalties regime should be consistent with the overall NZ ETS objectives of helping New Zealand meet emissions reduction targets and reduce net emissions below business as usual levels. This means enabling enforcement of the NZ ETS' rules. It also includes avoiding perverse incentives and unintended consequences.

Minimal Complexity and Administrative Cost

Implementation of the NZ ETS should be as straightforward as possible to minimise administration and transaction costs for both participants and the Government. Therefore, compliance and penalties should be straightforward to apply and administer.

Consistency and Proportionality

Implementation of the regime should treat participants proportionately and avoid advantaging some participants over others. Proportionality means interventions are appropriately scaled to address the problem or achieve the outcome sought.

Clarity and Transparency

The regime, including its penalties, should be understandable, unambiguous and transparent. Transparency also includes ensuring that appropriate information is made publicly available in a timely manner.

Market Efficiency

An ETS market is efficient when it achieves allocative efficiency and delivers efficient price discovery. The penalty and compliance regime should encourage participants to meet their reporting requirements accurately and in a timely manner to inform unit supply decisions by the Government and to accurately account for abatement. In addition, implementation of the penalty and compliance regime should not distort the market, or risk undermining the emissions cap, compared with the situation if the obligation had been met in a timely manner.

3.3 What other options have been ruled out of scope, or not considered, and why?

An option considered out of scope was that of increasing the publication of information about non-compliance, so as to put pressure on participants to comply with their obligations and to protect the scheme's integrity. This aspect of the NZ ETS improvements will be considered under the market information work programme.

An approach which did not include the Synthetic Greenhouse Gas levies provisions of the CCRA was considered. However, it was determined that alignment between parts of the CCRA is advantageous and promotes clarity and predictability in the statute's application. The behaviours captured by the provisions are analogous between the NZ ETS and the Synthetic Greenhouse gas levies; for instance, in relation to missing deadlines.

In determining the scope of the infringement regime, some offences have been excluded as being inappropriate for infringement fees and fines. These have been ruled out of the scope of the proposal, which has enhanced the relative performance of introducing an infringement regime as compared to other options considered. It is important to note that the infringement regime will operate alongside civil penalties for errors in reporting, claiming allocations, and failing to surrender or repay units, where it is appropriate for discretion to be exercised, and prosecution where there is a heightened level of culpability.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

| | Status quo | Greater use of criminal sanctions | Extension of per-unit penalties | Civil pecuniary penalties | Infringement offences (preferred option) |
|---|------------|--|--|--|--|
| Integrity | 0 | ++ Would lead to some increase in enforcement of compliance and therefore increased scheme integrity, although some prosecutions may result in unfairly high sanctions, meaning some level of unsanctioned non-compliance would remain. | -- Enforcement is more likely to occur due to the efficiency of the regulator, rather than the Court, imposing the penalty. However, per-unit penalties need to be linked to emissions units and are thus not necessarily linked to the targeted offences. | 0 Unlikely to change the number of enforcement actions taken due to the costs involved with going through the Courts, resulting in some non-compliance remaining unsanctioned | + Enables an escalation pathway from warnings and education to infringements and then on to sanctioning more severe cases with prosecution. Although the sanctions are lower, which may not have the same deterrent impact on large participants, it is likely to result in more enforcement of low-level non-compliance overall, and with it greater scheme integrity. |
| Minimal complexity and administrative cost | 0 | -- Costs of this option are higher than status quo – both financially to participants and administratively. | - The administrative cost in determining the penalties based on units is greater than the status quo. | 0 No change to the complexity or administrative costs from the status quo. | ++ Are lower cost for agencies to deliver, as are strict liability. Fines/fees are simple to understand compared to more complex penalty options or court applied penalties. |
| Consistency and proportionality | 0 | - Would depend on how consistently the criminal sanctions could be applied through the courts, particularly if high administrative costs and the in the public interest test impact on who could be sanctioned and when. | + Penalties would be different for each participant due to the unit basis which may be considered more proportionate to the size of the offence, but is not consistent. | - Would depend on how consistently the civil pecuniary penalties could be applied through the courts, particularly if high administrative costs and the in the public interest test impact on who could be sanctioned and when. | + Fines/fees apply to clearly defined actions at a clearly defined rate either to individuals or body corporates, therefore they are very consistent. However, this is balanced against proportionality as the penalty level is 'one size fits all', which may be a small sanction for large corporates for example. |

| | | | | | |
|---------------------------------|---|---|---|--|---|
| Clarity and transparency | 0 | - The outcome of Court proceedings would depend on matters taken into account at sentencing | + The penalty could be made clear by setting a price for each unit the penalty attaches to | + Civil pecuniary penalties are required to be clearly defined and transparent in application through the courts. | + Infringements will be clearly defined in regulations with key aspects such as maximum values defined in legislation. It may be slightly more complex to determine when an infringement fee, fine, or prosecution will apply to the specific circumstances. |
| Market efficiency | 0 | -- Prosecution can be time consuming, defendants are likely to act to minimise risk until the outcome is clear | + Per-unit penalties are likely to take time to determine and impose, but are still quicker and more efficient than court proceedings. | 0 No change from the status quo. | + Infringements are efficient to impose and for participants to deal with and therefore quicker than court proceedings. |

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The preferred option is to introduce infringement offences to address low-level non-compliance, whilst retaining offence sections for more serious non-compliance. This option best meets the criteria identified. Stakeholders are generally supportive of this proposal, and we have a high degree of confidence in our assumptions and evidence base, all of which have been subject to a rigorous peer review process.

Integrity

The introduction of infringement offences will be the most cost-effective and proportionate way to incentivise NZ ETS participants to meet their obligations under the CCRA. The status quo approaches of warnings and education has failed to significantly improve compliance rates. Enforcement agencies have determined that the public interest in pursuing prosecutions for low-level offences is generally outweighed by the financial, time, and opportunity costs to agencies bringing Court proceedings.

The enhanced status quo option will be less reliable, as some non-compliance may continue to go unsanctioned where sanctions imposed were too high. Per day penalties may also result in penalties that are too low or too high.

The introduction of infringement offences will create an “escalation pathway”, whereby enforcement agencies will have a middle option for sanctioning a non-compliant participant that is stricter than a non-regulatory approach and not as severe as prosecution. Enabling enforcement of the rules of the NZ ETS will help New Zealand meet emissions reduction targets and reduce net emissions below business as usual levels.

Minimal Complexity and Administrative Cost

Infringement offences are well-used across the public service and are relatively straightforward for agencies to deliver. The EPA and MPI will not need to prove a mental element when issuing an infringement notice, as the offences are strict liability. Enforcement agencies will be freed up to carry out proactive engagement with participants and strategically target cases of more serious non-compliance.

Non-compliant NZ ETS participants will be required to pay a fee and improve their performance. They will not be required to attend a hearing or perform any other actions.

Consistency and Proportionality

The proposed levels of infringement fees and fines will be fair for non-compliant participants, taking into account the gravity of offences and the type of participants, such as individual or body corporate.

We propose for infringement fees to be set at a maximum of \$1,000 for individuals and \$2,000 for body corporates, and for infringement fines to be set at a maximum of \$3,000 for individuals and \$6,000 for body corporates. These fees are set at the maximum recommended levels in the Ministry for Justice’s *Policy Framework for New Infringement*

Schemes. Although there are potentially high financial incentives for non-compliance in the NZ ETS, these fee and fine levels have been set at a rate to be commensurate with other infringement regimes (see for example, the Health and Safety at Work (Infringement Offences and Fees) Regulations 2016). The levels have also been set commensurate with the level of fines that can be imposed by the courts in cases of prosecution with the ETS to provide an escalation pathway. Prosecution fines within the CCRA range from \$8,000 to \$24,000.

Imposing sanctions early gives participants the opportunity to amend their behaviour, rather than low-level non-compliance acting as a precursor to prosecution.

Clarity and Transparency

The detail of the infringement offences and their respective penalties will be clearly set out in regulations. Explanatory material about the regulations will be published online by the Ministry to accompany the regulations. Enforcement agencies will work with participants to continue to understand their obligations.

Market Efficiency

Given that non-financial penalties have not worked for a number of non-compliant NZ ETS participants, enforcement agencies have learned that proportionate fines are necessary to encourage participants to meet their reporting requirements accurately and in a timely manner. Infringement fines will not be set at such a high level as to dissuade voluntary participants from remaining with the scheme. A functioning compliance and penalties regime will inform unit supply decisions and accurately account for abatement.

5.2 Expected costs of proposed approach, compared to taking no action

| Affected parties | Nature of cost or benefit | Impact | Evidence certainty¹ |
|--|---|---|--|
| Regulated parties: Non-compliant NZ ETS participants | Non-compliant NZ ETS participants will need to pay a fee on receipt of an infringement notice for non-compliance. There is a cost to improving internal systems to avoid future non-compliance. | Medium | High, the fee levels will be set in regulation |
| Regulators: EPA and MPI | There will be an increased workload in the short-term as more offences are distributed. Agencies will need to update their policies and systems to reflect the new regime and resource the NZ ETS enforcement work appropriately. | High. The monetised cost for the EPA to implement the range of proposed ETS improvements, including infringement offences, is \$1-2 | High, costs have been forecast based on costs to other regulators establishing |

¹ High – based on historical trends, existing data and evidence from current operations or from other regulators

Medium – may include some projections based on existing evidence

Low – low levels of existing evidence

| | | | |
|--|--|--|---|
| | | million. There will also be smaller ongoing operational costs. | similar schemes. |
| Wider government: especially the Ministry | Drafting regulations and taking the proposal through the Parliamentary process takes time, resources and political capital. | Medium | High |
| Māori and iwi | Some iwi are affected by NZ ETS obligations through receipt of land and forests within Treaty Settlements that incur an NZ ETS obligation. This includes land held in Māori trust or in title arrangements with a multitude of customary owners. | Low | High, Māori and iwi participants will be captured by the proposal |
| Other parties: Compliant NZ ETS participants and potential voluntary future participants | Currently compliant and potential future voluntary NZ ETS participants will still need to review their practices to ensure they will not unintentionally not comply and receive infringement notices in the future. | Low | Medium |
| Total Monetised Cost | | | |
| Non-monetised costs | | Nil | N/A |

5.2 cont. Expected benefits of proposed approach, compared to taking no action

| | | | |
|--|---|--------|--------|
| Regulated parties: Non-compliant NZ ETS participants | Rather than receiving only warning notices and then being taken to Court once offending reaches a certain level of severity, non-compliant participants will be influenced by receipt of a fine to change their internal practices and thereby avoid the potential consequence of a Court proceeding. | Medium | Medium |
| Regulators: EPA and MPI | In the long-term, compliance levels will increase, freeing up agencies to spend more time on proactively engaging with NZ ETS participants | High | High |

| | | | |
|--|--|--------|------|
| | and on sanctioning higher-level offences. | | |
| Wider Government: especially the Ministry | The NZ ETS is appropriately enforced, assisting New Zealand to meet its international emissions reductions obligations. The NZ ETS is able to be more readily linked to international markets and is thus future-proofed for any future linkages. The revenue from infringement offences will contribute to the consolidated Crown accounts. | High | High |
| Māori and iwi | As noted above, some iwi are affected by NZ ETS obligations through receipt of land and forests within Treaty Settlements that incur an NZ ETS obligation. This includes land held in Māori trust or in title arrangements with a multitude of customary owners. | Low | High |
| Other parties: compliant NZ ETS participants and potential future voluntary participants | Sense of fairness and justice that some participants are no longer breaching obligations without penalty. Increased willingness to remain with the scheme. Future potential NZ ETS participants may have an improved view of the scheme's integrity and an increased willingness to register. | Low | Low |
| Total Monetised Benefit | | Medium | High |
| Non-monetised benefits | | Medium | High |

5.3 What other impacts is this approach likely to have?

Proposals to improve the NZ ETS will have implementation costs of around \$1-2 million in the first year for the EPA. There will also be smaller, ongoing operational costs.

A wider potential cost is that non-compliant NZ ETS participants who receive an infringement notice may believe they committed only a minor error and view the EPA and MPI as overly bureaucratic. Members of the public who hear about the heightened enforcement taking place may also subscribe to this view.

This is acknowledged as a risk. However care will be taken to ensure that fines are proportionate to the gravity of the offence. Also fines will start at a low level (\$1000) and then escalate for repeat offences. Moreover, the communications accompanying the work programme of improvements to the NZ ETS emphasises the importance of this market-based mechanism to helping New Zealand achieve its international emissions reduction targets. Understanding the importance of supporting the integrity of the NZ ETS may temper the response of non-compliant participants and members of the public who learn of the regulatory changes.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred option is compatible with the Government's 'Expectation's for the design of regulatory systems'.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Administration and Enforcement of the Regime

The EPA will be responsible for the operation and enforcement of infringement offences. Roles relating to forestry will be delegated to MPI, in line with delegations that are currently in place.

Investigations and recommendations on infringement notices will be carried out internally by staff members warranted in accordance with the CCRA. There will be no increased need for enforcement officers to conduct field work.

Internal policies across the enforcement agencies will guide the operation of the regime and may include a transition period. Decisions on whether to prosecute will be managed under existing policies developed by agencies, which will be updated to take into account the introduction of infringement offences.

Use of Revenue Gathered from Fees and Fines

The revenue gathered from all fees and fines issued under the infringement offence regime will be returned to the Crown. It will not be held by the enforcement agencies, avoiding the unintended consequence of agencies having an incentive to issue more fees and fines than necessary.

Impacts on Legislation and Regulations

The proposed approach will be given effect through authorising provisions in the CCRA, with detail provided through supporting regulations. We envisage that the specific offences and their maximum fees and fines will be set out in a high-level way in the CCRA, and that the CCRA will empower the making of regulations. Regulations would be passed to set out the detail of the offences and the quantum of each fee and fine.

Timeframes

A detailed implementation plan was not developed in advance of public consultation. However, subject to Cabinet approval, it is intended that the CCRA will be amended to empower the making of regulations in 2019, and specific regulations relating to infringement offences would be developed in parallel over 2019 to take effect in 2020. Once Cabinet approval has been given, a more specific timeframe will be developed. The timeframe will allow sufficient time for regulated parties to consider changes to their behaviour.

Any Concerns of Affected Parties

Affected parties have not identified any concerns with their ability to implement the regime in a manner consistent with the Government's 'Expectations for regulatory stewardship by Government agencies'.

6.2 What are the implementation risks?

Risks and Mitigations for Enforcement Agencies

Given that enforcement activity will increase in the short-term following the introduction of the infringement offences, there is a risk that enforcement agencies will not be adequately resourced to meet this higher workload.

This risk can be mitigated by enforcement agencies signalling within Budget processes the need for additional resourcing and budget for enforcing the NZ ETS. This risk is manageable due to the reasonable timeframes before implementation of the regime.

Risks and Mitigations for Government

Given that the NZ ETS compliance and penalties work forms just one part of the wider programme on improvements to the NZ ETS, a risk arises that this work may be delayed due to obstacles encountered in other parts of the work programme.

This risk cannot easily be mitigated given that there are many uncertainties about the future direction of the NZ ETS work programme. However, it may be possible to progress the compliance and penalties work as a discrete piece of work, or in combination with other less complex, operational matters identified in the 2015/16 NZ ETS Review.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Success would be measured by reduced rates of non-compliance, and therefore proportionally fewer infringement notices being issued over time. Information on compliance rates will continue to be collected. The Ministry for the Environment will continue to monitor the effectiveness of the CCRA and undertake its regulatory stewardship role to ensure the legislation is fulfilling its desired purpose. This will include consideration of whether the purpose is being fulfilled in an administratively efficient way.

As is required across all infringement regimes, enforcement agencies will be required to provide MoJ with annual statistics on the operation of the regime.

7.2 When and how will the new arrangements be reviewed?

Assessments of the regime will be conducted by the Ministry as part of its responsibility for the NZ ETS legislation. Enforcement agencies will contribute data and evidence into this regulatory stewardship review.

A review of the infringement scheme’s functioning will be conducted after its second year of operation, or in the instance where a significant proportion of infringement fees are appealed. A review is likely to cover the following matters:

- The effectiveness of the scheme from the perspective of operational staff, including co-ordination between organisations.
- Areas of improvement, in terms of the fair and consistent application of infringement notices.
- Numbers of reviews, appeals, and non-payment (to ensure these are not excessive).
- The actual cost of administering the scheme.
- The success of the scheme as a deterrent for non-compliance.

In addition, enforcement agencies will provide compliance data to MoJ annually. The Ministry and MoJ will work together to identify and respond to any concerns.

Appendix One: Proposed Infringement Fees and Fines

Table 1: Proposed Infringement Fees and Fines

| CCRA section | Proposed infringement offence | Proposed infringement fee | Proposed infringement fine | Sanction to be replaced | Estimated total offences per year for forestry and non-forestry offences |
|-----------------------|---|--|--|---|--|
| s 129(1)(a) | A person is a participant in any year and fails to comply with the section 62(a) requirement to collect the prescribed data or other prescribed information (which data or information must, if required by regulations made under the Act, be verified by a person or organisation recognised by the EPA under section 92. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 10 for non-forestry offences. 30 in a mandatory reporting year for forestry. |
| | A person is a participant in any year and fails to comply with the section 62(b) requirement to calculate the emissions and the removals from the activity in accordance with the methodologies prescribed in regulations made under the CCRA. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry offences; it is not expected that this provision will be used regularly. 0-1 for forestry. |
| | A person is a participant in any year and fails to comply with the section 62(c) requirement to, if required by regulations made under the Act, have the calculations verified by a person or organisation recognised by the EPA under section 92. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. This provision is not applicable for forestry. |
| | A person is a participant in any year and fails to comply with the section 62(d) requirement to keep, in the prescribed format (if any), records of the data or information and calculations. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry offences. 60 for forestry offences. |
| s 129(1)(b)(i) | A person fails to notify the EPA under section 56 that the person is carrying out an activity listed in Schedule 3. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction | 7 for non-forestry. 23 for forestry. |

| CCRA section | Proposed infringement offence | Proposed infringement fee | Proposed infringement fine | Sanction to be replaced | Estimated total offences per year for forestry and non-forestry offences |
|------------------------|--|--|--|---|--|
| | | | | \$24,000 subsequent convictions | |
| s 129(1)(b)(ii) | A person fails to submit an emissions return when required to do so under section 65 (annual emissions returns). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 5 for non-forestry. 16 for forestry. |
| | A person fails to submit an emissions return when required to do so under section 118 (submission of final emissions returns). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. 0 for forestry. |
| | A person fails to submit an emissions return when required to do so under section 189 (emissions returns for post-1989 forest land activities). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | Not applicable for non-forestry. 159 in a mandatory reporting year for forestry offences. |
| | A person fails to submit an emissions return when required to do so under section 191 (ceasing to be registered as participant in respect of post-1989 forest land). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | Not applicable for non-forestry 10 for forestry. |
| | A person fails to submit an emissions return when required to do so under section 193 (emissions returns in relation to transmitted interests). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | Not applicable for non-forestry 100 for forestry. |

| CCRA section | Proposed infringement offence | Proposed infringement fee | Proposed infringement fine | Sanction to be replaced | Estimated total offences per year for forestry and non-forestry offences |
|-------------------------|---|--|--|---|--|
| s 129(1)(b)(iia) | A person fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or closing allocation adjustment under either section 83 or 84, including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. Not applicable for forestry. |
| s 129(1)(b)(iii) | A person fails to keep records as required under section 67 (retention of emissions records). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. 60 for forestry. |
| | A person fails to keep records as required under section 86D (retention of records and materials in relation to allocation). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. Not applicable for forestry. |
| | A person fails to keep records as required by a fishing allocation plan under section 129(1)(iii)(B). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. Not applicable for forestry. |
| | A person fails to keep records as required by a pre-1990 forest land allocation plan as required under section 129(1)(iii)(C). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. Not applicable for forestry. |
| s 129(1)(b)(iv) | A person fails to notify the EPA of any changes relevant to or failure to comply with emissions rulings as is required to be notified under section 112. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. 0 for forestry. |

| CCRA section | Proposed infringement offence | Proposed infringement fee | Proposed infringement fine | Sanction to be replaced | Estimated total offences per year for forestry and non-forestry offences |
|--|--|--|--|---|--|
| s 129(1)(b)(v) | A person fails to notify the EPA, within the time required, of a matter required to be notified under section 82(2)(b). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. Not applicable for forestry. |
| | A person fails to notify the EPA, within the time required, of a matter required to be notified under section 192(3) as regards the effect of transmission of interest in post-1989 forest land. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | Not applicable for non-forestry 100 for forestry. |
| s 131(1)(a) | A person fails to provide information to the EPA or an enforcement officer when required to do so under section 94. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$12,000 on conviction for individuals \$24,000 on conviction for body corporates | 0 for non-forestry. 20 for forestry. |
| s 131(1)(b) | A person fails to appear before the EPA or an enforcement officer when required to do so under section 95. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$12,000 on conviction for individuals \$24,000 on conviction for body corporates | 0 for non-forestry. 0 for forestry. |
| | A person fails to produce any document or documents, when required to do so under section 95. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$12,000 on conviction for individuals \$24,000 on conviction for body corporates | 0 for non-forestry. 0 for forestry. |
| s 260(1)(a) Synthetic greenhouse gas levy | A person fails to provide information to the EPA or an enforcement officer when required to do so under section 253. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$12,000 on conviction for individuals \$24,000 on conviction for body corporates | 0 for non-forestry. This is not applicable for forestry. |
| s 260(1)(b) | A person fails to appear before the EPA or an enforcement officer when required to do so under section 254. | \$1,000 individual | \$3,000 individual | \$12,000 on conviction for individuals | 0 for non-forestry. |

| CCRA section | Proposed infringement offence | Proposed infringement fee | Proposed infringement fine | Sanction to be replaced | Estimated total offences per year for forestry and non-forestry offences |
|--|---|--|--|---|--|
| Synthetic greenhouse gas levy | | \$2,000 body corporate | \$6,000 body corporate | \$24,000 on conviction for body corporates | This is not applicable for forestry. |
| | A person fails to produce any document or documents when required to do so under section 254. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$12,000 on conviction for individuals \$24,000 on conviction for body corporates | 0 for non-forestry. This is not applicable for forestry. |
| s 259 Synthetic greenhouse gas levy | A person who is an importer fails to comply with the section 248(1)(a) requirement to collect prescribed data or other prescribed information (which data or information must, if required by regulations, be verified by a person or an organisation recognised by the EPA for the purpose). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. This is not applicable for forestry. |
| | A person who is an importer fails to comply with the section 248(1)(b) requirement to keep records of the data or information in the prescribed format (if any). | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. This is not applicable for forestry. |
| | A person who is an importer fails to comply with the section 248(1)(c) requirement to keep sufficient records to enable the EPA to verify, in relation to any levy year, the quantity of leviable goods of each class imported, and the total amount of levy paid on those goods. | \$1,000 individual \$2,000 body corporate | \$3,000 individual \$6,000 body corporate | \$8,000 first conviction \$16,000 second conviction \$24,000 subsequent convictions | 0 for non-forestry. This is not applicable for forestry. |