



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

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# Proposed infringement offence regulations under the Crown Minerals (Decommissioning and Other Matters) Amendment Bill

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DISCUSSION DOCUMENT **SEPTEMBER 2021**

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**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

## **Ministry of Business, Innovation and Employment (MBIE)** Hīkina Whakatutuki - Lifting to make successful

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Online: ISSN 978-1-99-100890-9

SEPTEMBER 2021

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# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 19 October 2021.

Your submission may respond to any or all issues. Where possible, please include evidence to support your views, for example, references to independent research, facts and figures, or relevant examples.

Please include your contact details in the cover letter or email accompanying your submission.

You can make your submission by completing the submission form (a Microsoft Word document) available at [www.mbie.govt.nz/have-your-say](http://www.mbie.govt.nz/have-your-say) and:

› Emailing it to [resource.markets.policy@mbie.govt.nz](mailto:resource.markets.policy@mbie.govt.nz).

› Mailing it to:

Resource Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140  
New Zealand.

Please direct any questions that you have in relation to the submissions process to [resource.markets.policy@mbie.govt.nz](mailto:resource.markets.policy@mbie.govt.nz).

## Use and release of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers. We may contact submitters directly if we require clarification of any matters in submissions. MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

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- › provide a separate version excluding the relevant information for publication on our website.

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# Section One: Introduction

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## The Crown Minerals (Decommissioning and Other Matters) Bill is currently before the Economic Development, Science and Innovation Select Committee

1. The Crown Minerals (Decommissioning and Other Matters) Bill (the Bill) was introduced to Parliament on 23 June 2021 and is currently before the Economic Development, Science and Innovation Select Committee.<sup>1</sup>
2. The Bill proposes to amend the Crown Minerals Act 1991 (CMA) to strengthen the rules governing the petroleum sector's responsibility for decommissioning. The Bill proposes to:
  - › Introduce an explicit statutory obligation on all current and future petroleum permit and licence holders to carry out and meet the costs of decommissioning.
  - › Require permit and licence holders to obtain and maintain a financial security to secure in full or in part the performance of their decommissioning obligations that can be accessed by the Crown if a permit or licence holder fails to carry out or fund decommissioning.
  - › Empower the Minister to carry out more effective monitoring of a permit or licence holder's financial position and plans for field development, and to carry out assessments of a permit or licence holder's financial capability to complete decommissioning when needed.
  - › Provide MBIE with additional enforcement powers to accept enforceable undertakings, issue compliance notices, and utilise a new infringement offence scheme.
  - › Require permit or licence holders to make payments towards the cost of any residual liability.

## The Proposed enforcement powers apply to petroleum and minerals permit and licence holders

3. The proposed decommissioning and post-decommissioning obligations in the Bill only apply to petroleum permit and licence holders. However, other proposed changes, such as the proposed additional enforcement powers, apply across the CMA to petroleum and minerals permit and licence holders.
4. The Bill proposes three enforcement powers to improve compliance and enforcement under the CMA:
  - › **Compliance notices** – a notice with statutory backing requiring a specified matter be addressed.
  - › **Enforceable undertakings** – an enforceable agreement between the regulator and a non-compliant party that a prosecution will not be undertaken if they agree to certain conditions, activities, or actions.
  - › **Infringement offences** – instant monetary penalties for non-compliance with certain requirements.

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<sup>1</sup> [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_111853/crown-minerals-decommissioning-and-other-matters-amendment](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_111853/crown-minerals-decommissioning-and-other-matters-amendment)

5. These proposed changes are intended to give MBIE, as the regulator, sufficient and fit-for-purpose compliance tools, ensuring that the regulatory regime is working effectively and in line with modern regulatory practice.

## The Purpose of this Discussion Document

6. This Discussion Document proposes regulations on infringement offences and associated infringement fees. Infringement fees would be specified in the infringement notice issued by the Chief Executive or the enforcement officer, the person or body with the power to issue infringement offence notices.
7. Section Two of this document sets out the context behind the infringement offence scheme. Section Three sets out the options for the infringement offences and the infringement fees to be set in regulations.
8. We seek your feedback on the proposed offences and their fees.
9. We sought feedback on other proposed regulations to support the Bill in a Discussion Document published on 13 July 2021: *Proposed regulations to support the Crown Minerals (Decommissioning and Other Matters) Amendment Bill 2021*.<sup>2</sup> Submissions closed on 7 September 2021.

## Next steps

10. We will collect and analyse all submissions received by the closing date (5pm on 19 October 2021).
11. Your submission will help us develop the infringement offence scheme to be set out in regulations.

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<sup>2</sup> <https://www.mbie.govt.nz/dmsdocument/15575-discussion-document-proposed-regulations-to-support-the-crown-minerals-decommissioning-and-other-matters-amendment-bill-2021>

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## Section Two: Context

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### The Government is proposing an infringement offence scheme

12. The Bill proposes an infringement offence scheme, with the offences and associated fees to be prescribed in regulations.
13. This proposal was consulted on publicly in 2019 through the Discussion Document: *Review of the Crown Minerals Act 1991*.<sup>3</sup> The Discussion Document received 167 submissions. Most submitters that provided views on the CMA's current enforcement toolbox, agreed that it needs expanding. The proposed additional compliance tools and penalties were largely supported. Four submitters did not support the introduction of infringement notices and stated that compliance notices and enforceable undertakings were sufficient tools without resorting to "on the spot" fees.

### The Purpose of infringement offences

#### What are infringement offences?

14. As a regulatory tool, infringement offences provide an efficient method of encouraging compliance. They enable the regulator to issue instant fees where there are reasonable grounds to believe that there have been clear, relatively low-level, breaches, for example, issuing a parking ticket. Infringement offences are a common feature of many other regulatory regimes, including fisheries, resource management, and telecommunications.
15. The level of fees associated with infringement offences in other regulatory settings tends to be low (e.g., often less than \$1,000, but up to \$5,000 per infringement) due to their instant nature and the low level of offending involved. The intent is to encourage compliance with simple, specific requirements.
16. Infringement offences prevent the courts from being overburdened with a high volume of relatively straightforward and low-level offences. The criminal courts will generally become involved only if the infringement fee is not paid or if the recipient of the infringement notice challenges it. If the matter is referred to the Courts, the Courts may impose an infringement fine.
17. The infringement offences being developed are intended to run in parallel with existing offences and penalties under the CMA, and the proposed new civil pecuniary penalties and criminal offences in the Bill. That is, the current and proposed civil and criminal penalties will relate to conduct and breach of obligations that may also be covered by the infringement offences. For example, under section 33 of the CMA, the permit holder must submit royalty returns and pay royalties. Non-compliance with this obligation can be enforced by pursuing criminal conviction and maximum penalty. We are proposing late submission of royalty returns and late payments of royalties as infringement offences, for which non-compliance can be enforced through an infringement notice and instant fee. The infringement offences will be specified in the regulations and will generally relate to less serious misconduct that involves straightforward issues of fact that can be easily identified by enforcement officers. The Minister can also initiate the permit revocation process if there is non-compliance.
18. The enforcement officer has the discretion not to impose an infringement fee if there were good reasons not to do so. Reasons not to take enforcement action arise from the public interest test, such as the offender being elderly, their health, or anything else about the offender that might not be considered 'fair and reasonable in the circumstances' if challenged in Court.

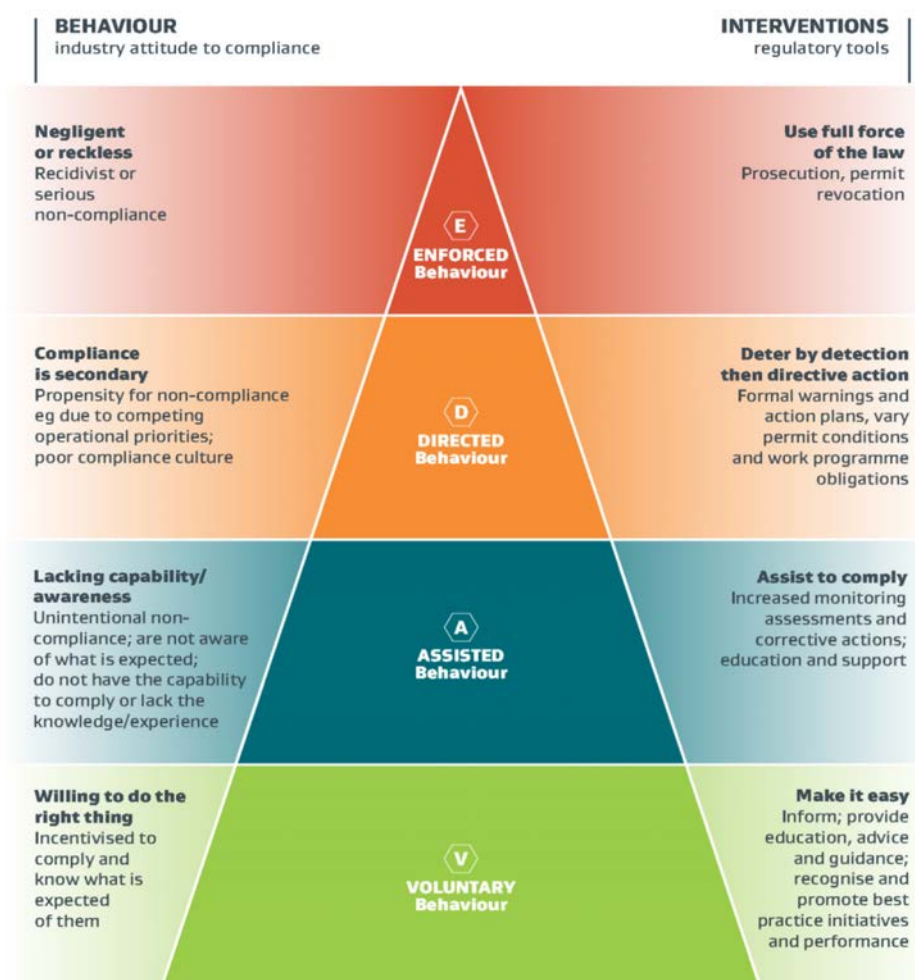
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<sup>3</sup> <https://www.mbie.govt.nz/dmsdocument/7320-discussion-document-review-of-the-crown-minerals-act-1991>

### The need for an infringement offence scheme in the Crown minerals regulatory regime

19. The Crown minerals permitting regime has around 830 active permits across New Zealand, its territorial waters, and exclusive economic zone. Permit operators range from small hobby gold panners to multi-national companies involved in petroleum extraction. Of the active permits, around 100 are 'Tier 1' which includes both minerals permits and petroleum licence and permit holders. Around 730 are 'Tier 2' minerals permits.
20. The regulator uses the "VADE" model ("Voluntary, Assisted, Directed, Enforced") to manage compliance and offending across the Crown minerals regime. The model uses an escalating suite of interventions and tools to encourage and enforce compliance (e.g., guidance, assistance, warnings, notices of direction, infringement notices, prosecutions). Infringement notices fall between 'enforced' and 'directed' behaviour.

**FIGURE 1: THE VADE MODEL**



21. However, there is a gap with respect to the kind of non-compliant behaviour that is most appropriately tackled with an infringement notice, such as the late-filing of reports and royalty returns.



22. MBIE completed a Regulatory Impact Assessment in June 2020 and established this gap as a problem.<sup>4</sup> Cabinet then agreed to amend the CMA to enable the development of an infringement offence scheme.<sup>5</sup> The scheme is now provided for in the Bill.
23. The table below gives an indication of the non-compliant behaviour the proposed infringement offence scheme seeks to change. The percentages are of late submissions or payment instances grouped by each permit or licence category. For example, on average 9% of all annual summary reports submitted each year for petroleum permit/licences are submitted late.

**TABLE 1: PERCENTAGE OF LATE SUBMISSIONS OR PAYMENT INSTANCES GROUPED BY EACH PERMIT OR LICENCE CATEGORY 2018-2020**

Type of permit/ licence	Late submission of annual summary reports	Late payment of royalties	Late payment of annual fees
Petroleum	9%	50%	9%
Minerals Tier 1	21%	58%	15%
Minerals Tier 2	30%	48%	23%

24. Annual summary reports and royalty returns are important not only to track activity, but are also a way to monitor overall compliance. Without timely submission of information records and reports, it is difficult to detect other non-compliant behaviour such as fraud. Following up on late submission and payments can create additional costs for the regulator and uncertainty around key reporting metrics such as the Crown's reserves.
25. Using the CMA's current enforcement toolbox, the regulator can respond to such non-compliance by:
- › taking no action;
  - › sending a letter requesting the permit holder address the non-compliance (but that does not legally compel action);
  - › taking action through the courts; or,
  - › initiating the permit revocation process (i.e., notifying the intention to revoke a permit and following through with revocation if non-compliant behaviour is not rectified).
26. These tools are ineffective for responding to low-level breaches. Taking no action does not address the problem and sending a letter to permit holders does not bring about the desired behavioural change. The strongest enforcement action available to MBIE, taking court action would be a disproportionate response and, along with permit revocation, is time-intensive and costly.
27. The proposed infringement offence scheme provides an effective tool for responding to low-level breaches, bridging the gap between warnings and other interventions in the 'Directed' part of the VADE model and non-compliance meriting prosecution such as permit revocation.

### Who is affected and how?

28. The proposed offences and associated instant fee for non-compliance is a maximum of \$1000 for an individual and \$3000 for a body corporate.

<sup>4</sup> <https://www.treasury.govt.nz/sites/default/files/2020-08/ria-mbie-petrol-may20.pdf>

<sup>5</sup> <https://www.mbie.govt.nz/dmsdocument/11618-regulatory-framework-for-decommissioning-petroleum-infrastructure-and-enforcement-strengthening-the-crown-minerals-act-regime-minute-of-decision-proactiverelase-pdf>

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## Section Three: Proposed infringement offences and associated fees

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### **Infringement offences are provided for in the Crown Minerals (Decommissioning and Other Matters) Amendment Bill**

29. The Crown Minerals (Decommissioning and Other Matters) Amendment Bill provides a power to prescribe infringement offences and corresponding fees in regulations:
- › not exceeding \$1,000 per offence, in the case of an individual;
  - › not exceeding \$3,000 per offence, in the case of a body corporate.
30. This document seeks your views on the details of the proposed infringement offence scheme, including what would constitute an infringement offence and the infringement fees that would apply to each offence in regulations.

### **Proposed infringement offences**

#### **How we identified the proposed infringement offences**

31. We identified the proposed infringement offences below in line with the Legislation Design and Advisory Committee's Legislation Guidelines<sup>6</sup> and the Ministry of Justice's *Policy Framework for New Infringement Schemes*.<sup>7</sup> The proposed infringement offences are all:
- › Offences that target relatively low-level breaches of the law that are generally regarded as being of comparatively minor concern to the general public.
  - › Offences where the conduct involves straightforward issues of fact that can be easily identified by an enforcement officer.
  - › Offences where MBIE has existing evidence of ongoing non-compliance.

#### **Categories of proposed infringement offences**

32. We propose infringement offences that generally fall into four categories:
- › Failure to submit information, records and reports within the time specified/by the due date;
  - › Failure to provide royalty return and failure to pay royalty by the due date;;
  - › Failure to make required payments, such as annual fees, within the time specified/by the due date; and
  - › Failure to notify of change of address and telephone number, within the time specified.
33. Please see Annex One for a list of proposed infringement offences.

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6 <http://www.idac.org.nz/guidelines/legislation-guidelines-2018-edition/compliance-and-enforcement/chapter-25/>

7 <https://www.justice.govt.nz/assets/Documents/Publications/infringement-governance-guidelines.pdf>

**Question 1:** Do you agree with the infringement offences we have identified? If not, why not?

**Question 1A:** Are there other infringement offences that you consider should be included? If so, please explain what they are and why.

## Proposed infringement fees

### How we identified the proposed infringement fees

34. We are proposing options for setting the amount of the corresponding fees for the infringement offences in accordance with the following guidelines:
- › The Crown Minerals (Decommissioning and Other Matters) Amendment Bill proposes that infringement fees may be set, not exceeding \$1,000 in the case of an individual and \$3,000 in the case of a body corporate.
  - › The Legislation and Design Advisory Committee's Legislation Guidelines state that in general, infringement fees should not exceed \$1,000, although, in cases with significant financial incentives for non-compliance, a higher fee may be justified to achieve the deterrent effect.
  - › The Ministry of Justice's *Policy Framework for New Infringement Schemes* states that infringement fees should generally be considerably less than the statutory maximum available to the Court following a successful summary prosecution. It also states that in setting infringement fees consideration must be given to the level of harm involved in the offending, the affordability and appropriateness of the penalty for the target group, and the proportionality of the proposed fee with the infringement fees for other comparable infringement offences.
35. Annex One sets out proposed fees based on our preferred option (further details are also provided below).

### Options for infringement fee levels

36. In addition to the status quo, we identify two alternative options for infringement fee levels, as follows.

#### *Option 1 - Status quo*

37. No infringement fees would be set in regulations, and the infringement offence scheme could not be implemented. This means that the regulator would not have an appropriate tool for responding to relatively low-level breaches of the CMA and there would be no behavioural change.

#### *Option 2 – flat infringement fee of \$1,000 for an individual and \$3,000 for a body corporate for all offences*

38. Option 2 is based on the maximum level of fees proposed in the Bill.

#### *Option 3 – infringement fee of \$500 for an individual and \$1,000 for a body corporate for offences relating to Tier 2 permits; and \$1,000 for an individual and \$3,000 for a body corporate for offences relating to Tier 1 permits*

39. Option 3 has different fees for different permit/licence tier levels to reflect the different scales of enterprise, as permit operators range from small hobby gold panners to multi-national companies involved in petroleum extraction.

**TABLE 2: EXAMPLES OF COMPARISONS WITH EXISTING INFRINGEMENT OFFENCE SCHEMES**

Approach	Regulations	Infringement offence	Infringement fee
\$1,000 fee for infringement offences relating to information provision	Health and Safety at Work (Infringement Offences and Fees) Regulations 2016, Schedule 1 <sup>8</sup>	37(1) Failing to provide information to occupational health practitioner	\$1,000
		13.5(1) Failing to provide WorkSafe with specified information if sodium fluoroacetate is present in workplace	\$1,000
Setting different fees for individuals and body corporates	Residential Tenancies Act 1986, Schedule 1B <sup>9</sup>	123A(5)(b) Failing to produce documents to chief executive	\$1,000 for a landlord with 6 or more tenancies \$500 for any other case
Different fees for different offences	Financial Markets Conduct Regulations 2014, Schedule 22 <sup>10</sup>	Failure to supply information prescribed under s63	\$5,000
		Failing to lodge financial statements under s 461H	\$7,500
		Failure to complete a winding-up report—preparation of financial statements under s 213(3)(a)	\$20,000

**Question 2:** Do you agree that these are the correct options to consider? If not, why not?

**Question 2A:** Are there other options we have not considered? If there are, can you please elaborate?

### Analysis of the options

40. Each of the options was analysed against the following four criteria:

- › **Effectiveness** – that is, the infringement fee is set at a level where it can act as an effective deterrent for the non-compliant behaviour
- › **Proportionality** – that is, the infringement fee is proportionate to the offence
- › **Regulatory certainty** – that is, the infringement fee is clear and transparent and provides for predictable regulatory outcomes
- › **Practicality** – that is, the infringement fee is straightforward to administer

<sup>8</sup> <https://www.legislation.govt.nz/regulation/public/2016/0030/latest/DLM6734030.html>

<sup>9</sup> <https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS454331.html>

<sup>10</sup> <https://www.legislation.govt.nz/regulation/public/2014/0326/latest/DLM6294944.html>

Criteria	Option 1 – Status quo	Option 2 – flat \$1,000 individual/ \$3,000 body corporate fee	Option 3 – \$500 individual/ \$1,000 body corporate fee for Tier 2; \$1,000 individual/ \$3,000 body corporate fee for Tier 1
<b>Effectiveness</b>	– If the infringement fee is not prescribed in regulations, the proposed infringement scheme cannot be fully implemented and would not deter low-level breaches.	++ The fee is set at the maximum level allowed for under the Bill and will be an effective deterrent for non-compliant behaviour.	++ The fee is set at a reasonably high level for Tier 1 and Tier 2 permit/licence holders and will be an effective deterrent for non-compliant behaviour.
<b>Proportionality</b>	N/A	– The fee is not proportionate to the types of proposed infringement offences and the offender’s ability to meet the cost of infringing.	++ The fee is proportionate to the type of permit/licence holder and their ability to meet the cost.
<b>Regulatory certainty</b>	N/A	++ It is clear and transparent for impacted parties.	++ It is clear and transparent for impacted parties.
<b>Practicality</b>	N/A	++ It would be straightforward to administer.	++ It would be straightforward to administer.

**Question 3:** Do you agree with our impact analysis? If not, please explain.

**Preferred option**

41. Our preferred option is Option 3. Infringement fees significantly add to the incentive to comply for low-level offences, as well as improving the information available for MBIE to carry out its regulatory functions.
42. We are proposing 19 different infringement offences. While the conduct itself is similar in nature, the different tier levels (Tier 1 and Tier 2) represent different scales of enterprise. For example, average annual royalties for Tier 1 petroleum permit/licence holders are \$1 million, compared to \$380,000 for Tier 1 minerals permit holders, and \$11,000 for Tier 2 minerals permit holders. Around 30% of Tier 2 minerals permit holders pay less than \$1,000 in royalties.

43. We therefore propose setting different fees for different offences, where the fees are in proportion to the target groups (Tier 1 and Tier 2). Option 3 also adheres more generally to the Ministry of Justice's *Policy Framework for New Infringement Schemes* regarding the design and operation of new infringement schemes, which states that in setting infringement fees consideration must be given to the level of harm involved in the offending, and the affordability and appropriateness of the penalty for the target group.
44. There are likely be some compliance and administrative costs for the industry, although the majority of this would be borne by non-compliant parties. The intention is not for infringement fees to impose additional obligations, but rather provide a tool to promote compliance within existing requirements.

**Question 4:** Do you agree with our preferred option? If not, please explain.

### **Implementation**

45. The regulations necessary to implement the infringement offence scheme are expected to be made next year, should the Bill be enacted.

### **Monitoring, evaluation and review**

46. There is a potential risk that the preferred option for setting the amount of the infringement fee will prove not to be an effective deterrent. Other potential risks include a large number of offenders challenging their infringement notices in Court (consequently using up time and resources) and low rates of payment of infringement fees.
47. The details of proposed monitoring and evaluation is expected to be included in the Regulatory Impact Statement for all proposed regulations under the Bill.

# Annex One: Proposed Infringement Offences and Fees

#	Offence	Fee - individual	Fee - body corporate
1	Failure to provide specified information for ongoing monitoring of financial position to the Minister within the time specified in the notice. (This will be dependent on the regulations developed under the Bill).	\$1000	\$3000
2	Failure to provide specified information for financial capability assessment to the Minister within the time specified in the notice. (This will be dependent on the regulations developed under the Bill).	\$1000	\$3000
3	Failure to provide complete Field Development Plan to the Chief Executive within the time required by regulations made under the Bill. [This will be dependent on the regulations developed under the Bill].	\$1000	\$3000
4	Failure to provide asset register to the Chief Executive within the time required by regulations made under the Bill. [This will be dependent on the regulations developed under the Bill].	\$1000	\$3000
5	Failure to make payment for post decommissioning obligations within the time required by regulations made under the Bill [This will be dependent on the regulations developed under the Bill].	\$1000	\$3000
6	Failure to supply specified information required under section 89ZR(4)(b) to the Chief Executive within the time specified in the notice.	\$1000	\$3000
7	Failure to supply annual report under a Tier 1 permit/licence to the Chief Executive by the due date.	\$1000	\$3000
8	Failure to supply annual report under a Tier 2 permit to the Chief Executive by the due date.	\$500	\$1000
9	Failure to supply reports and records under a Tier 2 permit to the Chief Executive by the due date.	\$500	\$1000
10	Failure to pay royalty under a Tier 2 permit to the Crown by the due date.	\$500	\$1000
11	Failure to provide royalty return under a Tier 2 permit to the Chief Executive by the due date.	\$500	\$1000
12	Failure to pay royalty under a Tier 1 permit/licence to the Crown by the due date.	\$1000	\$3000
13	Failure to provide royalty return under a Tier 1 permit/licence to the Chief Executive by the due date.	\$1000	\$3000
14	Failure to pay annual fee under a Tier 2 permit by the due date.	\$500	\$1000
15	Failure to pay annual fee under a Tier 1 permit/licence by the due date.	\$1000	\$3000

#	Offence	Fee - individual	Fee - body corporate
16	Failure to pay annual petroleum fees by the due date.	\$1000	\$3000
17	Failure to provide information required under section 99F of the Crown Minerals Act 1991 within the time specified in the notice.	\$1000	\$3000
18	Failure to give written notification to the Chief Executive of change to the address or telephone number, under a Tier 1 permit/licence, within the time specified.	\$1000	\$3000
19	Failure to give written notification to the Chief Executive of change to the address or telephone number, under a Tier 2 permit, within the time specified.	\$500	\$1000



