

**In confidence**

Office of the Minister of Transport

Cabinet Economic Development Committee

**INCREASING THE INFRINGEMENT FEE FOR USING A MOBILE PHONE WHILE DRIVING**

**Proposal**

- 1 This paper:
  - 1.1 seeks agreement to adjust the infringement fee for using a mobile phone while driving from \$80 to \$150 to align with other moving vehicle offences
  - 1.2 asks the Committee to authorise the submission to Executive Council of the Land Transport (Offences and Penalties) Amendment Regulations 2021.

**Relation to government priorities**

- 2 This is an operational adjustment that requires Cabinet approval. It also contributes to the Government's commitments on road safety.

**Distracted driving due to mobile phone use is a contributing factor in road crashes**

- 3 Between 2015 and 2019, there were 22 road deaths in New Zealand and 73 serious injuries where driver attention was diverted by a mobile phone (noting that these numbers are likely to be under-reported). This is a reduction from 26 road deaths and 90 serious injuries in the period 2004 to 2008 prior to the introduction of the offence in 2009.
- 4 Using a mobile phone while driving has a higher risk of distraction and a greater negative effect on driving behaviour than activities such as conversing with a passenger. This is because passengers are aware of the traffic situation and moderate their conversation accordingly.
- 5 In 2020, Police issued 39,090 infringement notices for using a mobile phone while driving.

**The current fee for using a mobile phone while driving is \$80, which is out of step with other moving vehicle offences (set at \$150)**

- 6 Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 specifies the level of infringement fee payable for each offence. This includes a range of road safety related offences including using a mobile phone while driving.
- 7 The current infringement fee payable by a driver who commits the offence of using a mobile phone while driving a vehicle is \$80.
- 8 The current fee for using a mobile phone while driving was set in 2009 when the offence was created. The amount reflected a cautious approach to the introduction of a new offence.

- 9 The current fee is an anomaly in the current penalties system. No other individual infringement fee is set at \$80 and no other individual infringement fee relating to operating a motor vehicle is less than \$150.
- 9.1 The only other infringement fees set at less than \$150 are parking violations, not paying a toll, licensing violations, creating excessive noise, cycle/helmet offences, graduated fees for excess speed (not more than 25km an hour over the speed limit), and failing to exercise due care towards animals.
- 9.2 The fee for all other moving vehicle offences is \$150 or more. Examples of offences that have a \$150 fine associated include failing to allow impeded traffic to pass, use of lane to right of centre line unless passing, unauthorised use of a special vehicle lane, unsafe passing, failing to move left before turning left, driving on a lawn adjacent to the road, driving too close, failing to give way, failing to stop at a stop sign, and failing to drive within lane.
- 9.3 For comparison, depending on state, use of a mobile phone when driving in Australia attracts a penalty of AU\$250-1,000. In the United Kingdom a penalty of £200 applies, and they are currently expanding their mobile phone use offence to capture a wider range of device use.
- 10 Using a mobile phone while driving carries 20 demerit points. This is the same number of points that applies to several other moving vehicle offences that carry a \$150 infringement fee (including driving too close, failing to keep left, and failing to allow impeded traffic to pass). I am not at this time proposing changing the number of demerit points associated with using a mobile phone while driving.

**Increasing fees is found to be associated with a reduction in offences**

- 11 There is some evidence indicating that higher fines are associated with fewer traffic violations (although effects may be limited in time and place). Enforcement also plays an important role. A meta-analysis of nine studies found that increasing a road safety penalty up to twice the current penalty fee was associated with a reduction in offending.<sup>1</sup>
- 12 Queensland increased their penalties for mobile phone use from AU\$400 to \$1,000 at the start of 2020. While it is too early to see the full impact of this change they have experienced a drop in deaths and injuries relating to distracted drivers relative to the previous year.

**There is an opportunity to align the fee with public expectations**

- 13 There is support from the general public to increase the current penalties for mobile phone use while driving. Waka Kotahi's 2020 *Public Attitudes to Road Safety* survey found 80 percent of respondents supported much higher fines for using a mobile phone while driving. This issue is also frequently raised in Ministerial correspondence.
- 14 Similarly, a key theme from consultation on *Road to Zero* (the national road safety strategy) in 2019 was the need for greater enforcement, especially around impaired

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<sup>1</sup> Elvik, R. 2016. Association between increase in fixed penalties and road safety outcomes: A meta-analysis. *Accident; Analysis and Prevention* 92:202-210

driving and mobile phone use. Many submitters called for a substantial increase in penalties to deter the use of mobile phones while driving. For example:

- 14.1 Transportation Group NZ, Otago Southland Regional Transport Committee, Canterbury Regional Transport Committee, South Island Regional Transport Committee Chairs Group, Holden New Zealand and Victim Support all supported stronger penalties for using a mobile phone while driving.
- 14.2 Whakatane District Council, the Automobile Association, Cycle Wellington, TRAFINZ, [REDACTED], and Northland Regional Transport Committee all supported reviewing and/or strengthening road safety penalties more broadly.

Withheld to protect the privacy of individuals

#### **I am seeking Cabinet agreement to adjust the fee to align with other related penalties**

- 15 A change to \$150 would provide a clear signal to drivers and better represent the seriousness of the offence.
- 16 I consider this proposal low-risk. There might be implications for some people who struggle to pay the higher fine, particularly if this results in unpaid fines being referred to Courts for collection, although this proportion is likely to be small.

#### **This will create a consistent baseline for the wider review of road safety penalties commencing this year**

- 17 Making this change will create a consistent baseline for further work to be undertaken as part of a wider review of key road safety penalties. The wider review will include further analysis around what the most appropriate fees for key road safety related offences might be and may also include consideration of demerit points.
- 18 This work was committed to under the *Road to Zero* initial action plan and is expected to commence later in the year. Any proposed changes resulting from this review will be publicly consulted on.

#### **Timing and the 28-day Rule**

- 19 The Amendment Regulations will come into force on 23 April 2021, 28 days following their notification in the *New Zealand Gazette*. No waiver of the 28-day rule is sought.

#### **Financial Implications**

- 20 There are no additional financial implications to this proposal for the Crown. Fee revenue collected from traffic infringements goes into the Government's Consolidated Fund.

#### **Legislative Implications**

- 21 Implementation of the increased infringement fee will be through the Amendment Regulations. No further legislative changes are required.

#### **Compliance**

- 22 The Amendment Regulations comply with:
  - 22.1 the principles of the Treaty of Waitangi

- 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- 22.3 the principles and guidelines set out in the Privacy Act 2020
- 22.4 relevant international standards and obligations
- 22.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

- 23 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 24 The Land Transport (Offences and Penalties) Amendment Regulations 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### **Impact Analysis**

- 25 The Regulatory Impact Analysis Team at the Treasury has determined that the regulatory proposal to adjust the fee for using a mobile phone while driving to align with other moving vehicle offences is exempt from the requirement to provide a Regulatory Impact Statement. This is on the basis that it is a technical adjustment that is expected to have no or minor impacts on businesses, individuals or not-for-profit entities.

### **Climate Implications**

- 26 There are no climate implications from this proposal.

### **Population Implications**

- 27 This amendment will only affect those using a mobile phone when driving (which is already an offence). However, there might be implications for some people who may struggle to pay the higher fine and/or if this results in unpaid fines being referred to Courts for collection.
- 28 To partially mitigate this, road policing staff routinely employ a graduated response model for traffic infringements and offer compliance solutions, particularly where better safety outcomes can be supported. Where the infringement relates to a critical safety matter such as distracted driving, Police can offer alternative resolutions.
- 29 There is a potential risk that Māori could be disproportionately affected by inequitable enforcement practices. Increasing the penalty does not increase the risk of inequitable enforcement, however, low socio-economic and vulnerable communities will be more impacted by an increase in fines compared to those on higher incomes.
- 30 Improving road safety outcomes for Māori is now an integral component of the Operational Outcomes Framework for road policing. The development of the Operational Outcomes Framework to recognise and act on the Crown's obligations in

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partnership with Iwi Māori is guided by both Te Huringa o Te Tai and Te Ara Kotahi, the existing organisational Māori strategies for Police and Waka Kotahi respectively.

### Consultation

- 31 Waka Kotahi, the Treasury, NZ Police, the Ministry of Justice, Te Puni Kōkiri, the Ministry of Social Development, Office for Disability Issues, the Ministry for Women, the Ministry of Business, Innovation and Employment Workplace Relations and Safety Portfolio team, Department of Internal Affairs, Ministry of Education, Ministry of Primary Industries, ACC, Worksafe and Parliamentary Counsel Office were all consulted on the proposal. The Department of Prime Minister and Cabinet was informed.
- 32 Agencies consulted did not raise any concerns with the proposal. Police noted that demerit points should also be considered in the wider review of key road safety penalties commencing this year.
- 33 While this specific proposal has not been publicly consulted on, as noted above, there is support from stakeholders and the general public for increasing the current penalties for mobile phone use while driving.

### Communications

- 34 The Amendment Regulations will be notified in the *New Zealand Gazette*. Waka Kotahi NZ Transport Agency will communicate this adjusted fee to the public and incorporate this change into their national road safety communications campaign.

### Proactive Release

- 35 Subject to the requirements of the *Official Information Act 1982*, I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

### Recommendations

The Minister for Transport recommends that the Committee:

- 1 **note** that the current infringement fee for using a mobile phone while driving is \$80 and was set in 2009 at the time the offence was created
- 2 **note** that the current fee is an anomaly in the current penalties system and no other individual infringement fees are set at \$80; the fee for most moving vehicle offences is \$150
- 3 **agree** to increase the infringement fee for using a mobile phone while driving to \$150 to align with other related penalties
- 4 **note** that driving while using a mobile phone carries 20 demerit points which is the same number of points that applies to several other moving vehicle offences that carry a \$150 infringement fee
- 5 **note** that no changes are proposed at this time to the number of demerit points associated with using a mobile phone while driving
- 6 **note** that a wider review of key road safety penalties is expected to commence later in 2021

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- 7 **note** that to give effect to recommendation 3 above, an amendment to Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 is required
- 8 **agree** to amend Schedule 1 of the Land Transport (Offences and Penalties) Regulations 1999 to give effect to recommendation 3
- 9 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will give effect to recommendation 3
- 10 **authorise** the submission of the Land Transport (Offences and Penalties) Amendment Regulations 2021 to the Executive Council
- 11 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will come into force on 23 April 2021
- 12 **note** that the Land Transport (Offences and Penalties) Amendment Regulations 2021 will be communicated directly to the NZ Police
- 13 **note** that I intend to issue a press release outlining the increase to the infringement fee for using a mobile phone while driving and that Waka Kotahi will incorporate the change in their communications campaigns on road safety
- 14 **note** that I intend to proactively release this paper and associated papers within 30 days of the Cabinet Economic Development Committee decision.

Authorised for lodgement

Hon Michael Wood

Minister of Transport

Proactively released by the Ministry of Transport