Effective Transport Financial Penalties – Policy Framework and Tool

Questions and Answers

1. **What are the Effective Transport Financial Penalties Policy Framework (the Framework) and associated Categorisation Tool (the Tool) and what is their purpose?**

   Framework

   The Framework is a new, systematic approach to support the process for setting more consistent and fit-for purpose financial penalty levels (infringement fees and fines imposed by a court) for offences across transport legislation. The aim is for financial penalty levels for offences that are more consistent:

   - across the three transport modes (land, maritime, aviation)
   - with relevant external regulatory frameworks (for example health and safety at work)
   - with the severity of expected harm from offences.

   Tool

   The Categorisation Tool is designed to support the Ministry of Transport (MoT) and the transport regulatory agencies (Waka Kotahi NZ Transport Agency, Maritime New Zealand, Civil Aviation Authority) to implement the Framework.

   The Tool provides a step-by-step process to propose financial penalty levels for offences. This is achieved by applying the Framework's principles, including assessing expected severity and risk of harm, and then using a penalty-level matrix which lists recommended penalty levels for three different offender groups (individuals, special regulated individuals, businesses or undertakings).

2. **What types of financial penalties does the Framework focus on?**

   The Framework focuses on addressing two key types of financial penalties:

   - Infringement fees – issued by enforcement or regulatory agencies like NZ Police, the transport Crown entities or councils. Infringement fees address comparatively minor law breaches and are immediate sanctions with relatively low penalty levels (for example, fees from speeding tickets)

   - Fines – usually imposed by a judge via the court process to address more serious offences and having comparatively higher penalty levels.

3. **Why is a new approach needed to set financial penalty levels in transport legislation?**

   We have identified various issues with the process by which financial penalties in transport legislation have been developed and maintained. This has included:

- Isolated, arbitrary development: Historically, we have at times tended to set penalty levels related to single topics or pieces of transport legislation in isolation. Sometimes this has occurred without considering comparable offences and penalties within and across the three transport modes (land, maritime, aviation) or in other comparable legislation.

- Lack of review to ensure currency: Some transport penalties, particularly for more serious offences, were set three decades ago. Consequently, maximum transport penalties are out of touch with comparable modern legislation.

  For example, the maximum financial penalty for an offence in transport legislation is $500,000 (for just three offences in the Railways Act 2005), compared to $3,000,000 for comparable offences in Health and safety at Work Act 2015 (HSWA). This is despite both HSWA and transport legislation having offences of similar levels of seriousness, and in the maritime and aviation sectors, Maritime New Zealand and the Civil Aviation Authority also being HSWA designated regulators.

These process issues have led to problems that reduce the effectiveness of transport-related financial penalties, including:

- Inconsistency across legislation: Penalty levels are sometimes inconsistent across transport legislation or wider related legislative frameworks. For example, there is a $150 penalty for running a red light in land transport regulation; compared to $500 for flying a drone over private property without permission in civil aviation regulation. This is despite the former offence arguably risking more severe harm, such as resulting in serious injury or even death.

- Disproportionality to level and risk of harm: Financial penalties are not always proportionate to the level of risk and potential harm that may result from offences. This is also illustrated in the example above.

- Inappropriate penalty levels for different offender types: Penalties are not always set at levels effective for particular offender types, such as 'regular' individuals, people with professional transport responsibilities, or body corporates. For example, there is a $600 fee for an unsecured item on a vehicle, whether the vehicle is a domestic car or a large commercial truck. A higher penalty would likely be needed to deter a large commercial operator. Therefore, it would be more effective to designate separate penalty levels appropriate to individuals and commercial entities (for example, body corporates).

How will the Framework improve penalty levels?

The Framework will provide a more systematic and comprehensive approach to help set penalty levels by encouraging regulators to consider four principles for effectiveness:

1. Respond to offences' severity (assess expected types of harm)
2. Act as a deterrent (be set at a level that will credibly deter offending)

3. Be proportionate (to harm and in relation to offences risking similar harm across transport legislation and in other relevant regulatory frameworks)

4. Consider the responsibilities and financial capacity of the individual or entity.

We expect that addressing the above principles will lead to penalties that are more logical, consistent and better targeted to address particular offending and groups of offenders.

Alongside applying the above principles, once the expected harm from a group of offences or an offence is determined, the Framework's Tool provides recommended penalty levels. The Tool enables consistent, logical penalty levels to be set. These levels relate to the:

- severity of expected harm from the offences
- likelihood that the expected harm will actually result if the offences were committed
- nature of the offender – individual, special regulated individual, business or undertaking.

What's new and innovative about the Framework

The Framework's whole approach of a principles-based method of systematically assessing offences and then applying logically structured penalties is new and innovative for the transport sector. However, two particular new features include:

- Assessing offences' severity by considering three types of possible harm:

    - *System* – harm to the transport system itself by breaking any rules designed to support a safe and effective system (for example, not having a proper transport operating licence) – system harm arises from all offences

    - *Safety* – tangible harm that may occur or has occurred to people (for example, arising from inherently dangerous actions like operating a vehicle or craft recklessly)

    - *Environmental or property* - tangible harm that may occur or has occurred to the environment or property (for example, arising from discharge of hazardous substances into the sea or damage to a vehicle or craft).

- Identifying two new categories of potential offenders that penalties can apply to:

    - *special regulated individuals* – commonly individuals with professional responsibilities in the transport system

    - *businesses or undertakings* – commercial operators (for example, sole traders or companies); or not-for-profit organisations (for example, councils or charities)

Current transport legislation recognises only three categories of potential offender that penalties can be applied to: individuals, body corporates, persons other than individuals ('persons' can include a corporation sole, body corporate, unincorporated body). The Framework's new category of 'special regulated individuals' provides penalty levels suitable for individuals with greater responsibilities than 'regular' individuals, and of whom we have greater expectations.

The new category of ‘businesses or undertakings’ includes a wider range of commercial entities than merely body corporates, such as sole traders. The term ‘undertakings’ also includes not-for-profit entities such as councils or charities. We consider that the term ‘businesses or undertakings’ better covers the range of entities that we both have higher expectations of (for example, because they offer services to people), and that may have greater financial capacity given that they are businesses or undertakings.

How can the new offender categories of special regulated individuals and businesses or undertakings be applied, given they don’t appear in current transport legislation?

The Framework’s penalty levels for special regulated individuals can be applied to offences that can only be committed by individuals that meet the criteria of special regulated persons. For example, for offences that have been drafted so they only apply to a ship’s master. In these cases the offence will still reference an individual in legislation, but that individual will face special regulated individual level penalties.

The Framework’s penalty levels for businesses or undertakings can be applied to any entities that are body corporates or potentially ‘persons other than individuals’, where these categories are designated in the offences. However, merely being a business or undertaking is not enough to incur businesses or undertaking-level penalties.

What are the positive outcomes envisaged from this new approach?

We expect a range of positive outcomes from applying the Framework, culminating in financial penalties that are more effective at helping prevent and respond to offending. Expected positive outcomes include penalty levels that are:

- more proportionate to the severity of harm expected from offences
- more consistent across offences in the three transport modes (land, maritime, aviation)
- more consistent with comparable offences in other relevant regulatory framework’s legislation (for example, Health and Safety at Work Act 2015, Resource Management Act 1991)
- set at levels better able to be credible deterrents to offending, and reflecting the transport sector and societies’ current views on the severity of offences
- better able to reflect a broader range of offender types of whom we may have higher expectations, including ‘special regulated individuals’ and ‘businesses or undertakings’.

How many transport offences are there in legislation?

We estimate there are around 6,000 offences across transport legislation (in Acts and regulations), excluding those in local bylaws.

What is the implementation timeframe?

There is currently no set timeframe to implement the Framework. MoT and the transport regulatory agencies take a ‘regulatory stewardship’ approach to reviewing transport legislation ongoing, to ensure it is up-to-date and fit-for-purpose. As we review legislation we will take opportunities to apply the Framework to ensure effective penalty levels for offences in that legislation. Currently MoT is reviewing penalty levels for selected offences as part of work involving the Civil Aviation Bill and civil aviation, maritime and marine regulations.

Applying the Framework across all transport offences will be a long-term goal over several years, given the number of offences in transport legislation and the comprehensive process

that must be followed in reviewing and potentially changing these. However, MoT may progress a dedicated project to speed up this process.

How was the new Framework developed?

The Framework was developed through the MoT undertaking a comprehensive policy development process over more than two years. We assessed the problems with financial penalty levels in current transport legislation and options for a more systematic way to set levels. This process has included considering academic research on compliance and enforcement, approaches to financial penalties taken in other New Zealand legislative frameworks outside transport and internationally, and input from transport Crown entities and other government agencies.

Who was consulted in developing this framework?

In developing the Framework, the Ministry of Transport consulted with:

- the three transport regulatory agencies – Waka Kotahi NZ Transport Agency, Maritime New Zealand, the Civil Aviation Authority
- other selected government agencies including the Ministry of Justice, New Zealand Police and The Treasury.

How much money is collected for transport-related infringement offences?

NZ Police publishes road policing offence data for selected offences for January 2009 to December 2020. This data includes the money collected from infringement fees for the following unsafe driver behaviours commonly associated with road trauma:

- alcohol-related offences (driving under the influence of alcohol)
- speeding (offences detected by mobile or static speed cameras or issued by officers)
- mobile phone offences (using a hand-held device for calling or texting while driving)
- red light-related offences (officer issued and red light camera, for running red lights at intersections for both vehicles and pedestrians)
- safety belt offences (restraint use offences - safety belts and child restraints).

The total money in infringement fees associated with the above offences and processed in the Police infringement processing system at ‘face value’ is:

- January to December 2019 - $129,683,950
- January to December 2020 – $122,353,090.

It is important to recognise, however, that the fee totals noted above associated with these offences are nominal only and may be paid, unpaid or referred to court. Many fees will be waived under NZ Police discretionary policy (for example, satisfactory completion of compliance offered for certain minor offences - such as a safety belt offence). A large number are also referred to court due to lack of payment. Each of these scenarios may result in a different amount ultimately being paid (including zero).

What does the Government do with money collected from these offences?

The money collected by NZ Police associated with the above offences is transferred into consolidated Government funds. The Government then determines how it will spend the money collected through its budget processes.

How much extra money will the Government collect from new financial penalties?

It is very difficult to estimate how much extra money the Government may collect, if any, from new financial penalties resulting from applying the Framework. This is because of the difficulty in determining the level of offending that may persist once new penalties are in place. One of the Framework's principles for effective penalties is to deter offending and we expect that penalty levels set using the Framework will reduce offending for some offences.

Will low income individuals be adversely affected by increased financial penalties?

Not necessarily. Infringement offences, the levels of which cannot be altered to account for financial capacity, are designed to address offending of low severity and therefore fees are set relatively low to be proportionate. Regarding fines which may be imposed by a court up to a maximum, the court can take financial capability, among other factors, into account and set a level of fine it considers appropriate.

To account for possible adverse effects of penalty levels on potential offender groups, the Framework also proposes that a public policy contextual factors review be conducted. This is particularly relevant to proposing infringement fee levels.

Once the Framework's Tool is used to determine a proposed penalty level for an offence or group of offences, the Framework recommends that regulators consider whether there are any other factors concerning the offence(s), or likely offender group, that may mean that the penalty level is likely to lead to perverse outcomes (for example, for vulnerable population groups). In this case regulators may then consider lowering the penalty level somewhat.

However, penalty levels set using the Framework cannot directly account for the financial circumstances of potential offenders. Regulators and enforcement agencies may have other options such not applying financial penalties and/or withdrawing licensing or certification, where perverse outcomes are expected.

What role does local government play in adopting the Framework?

We expect that the Framework will be useful for local government to use, to inform setting financial penalty levels for local transport-related bylaws. We intend to work with local government, including Local Government New Zealand, to introduce that sector to the Framework and collaborate on how they might adopt it.

Will I be able to make a submission or share my views on these proposed changes to the transport fees and penalties regime?

We welcome comment from any agency, operator or individual on the Framework and how it can be implemented. While we have developed the Framework as our own policy document and it is not open to a public submission process, we are open to assessing any comments around how the Framework might be improved.

Following using the Framework to propose financial penalty levels, the government's process for finally setting the penalty levels for offences in legislation is, however, normally open to public submissions and participation. As part of the process to change legislation regarding penalty levels or establish new penalties, we would expect to seek public

comment, or this would be built into the legislative process. This would be, for example, through our release of consultation documents for changes to regulations, and the call for public submissions at the Select Committee stage when amending penalties in Acts.