

Effective Transport Financial Penalties Categorisation Tool

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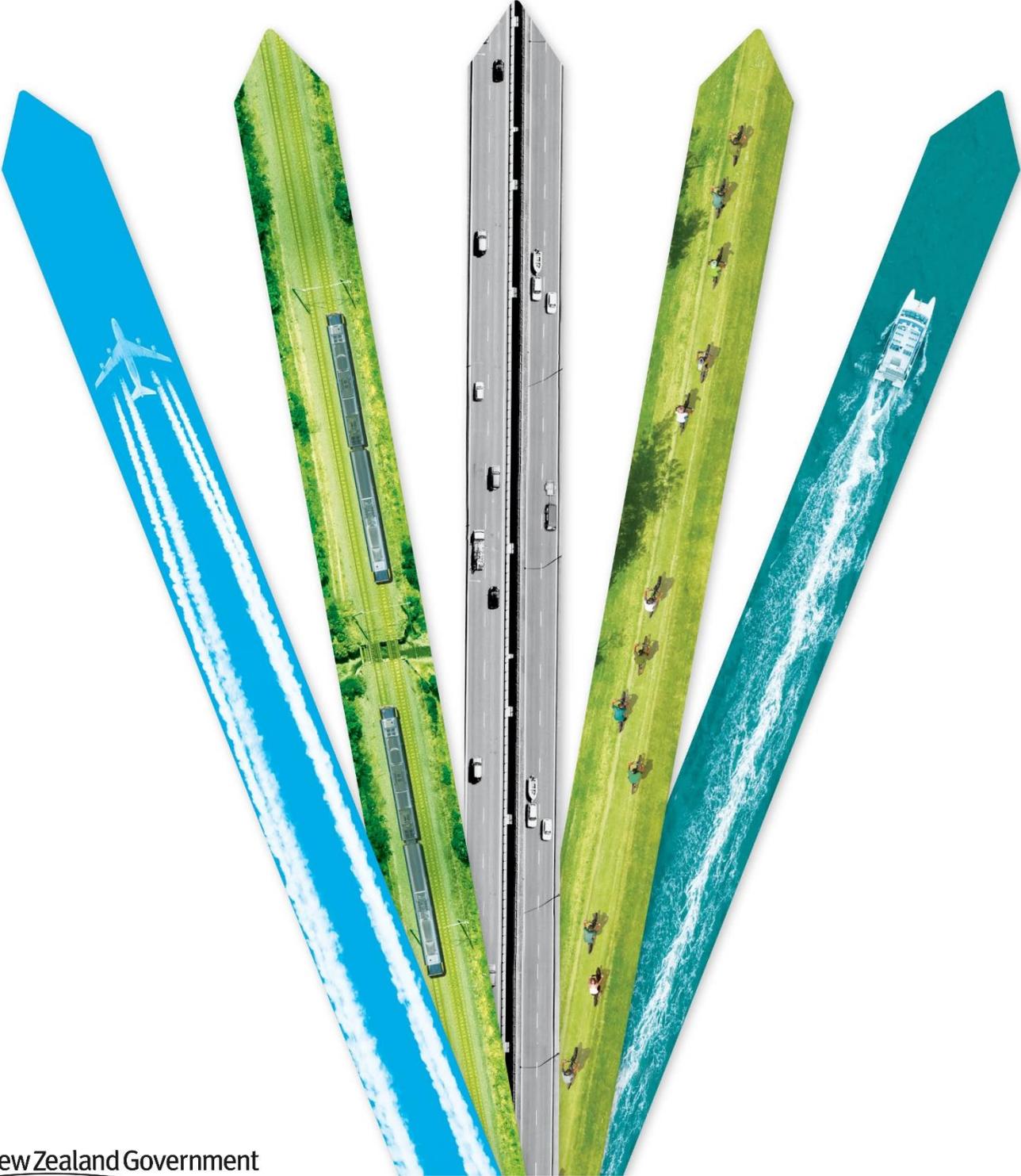


Table of Contents

Introduction.....	3
Section 1: Background, principles and categorisation informing the Tool.....	5
Principles for effective financial penalties.....	5
Categories of offences.....	5
Offender groups and associated penalties in offences in legislation	8
Section 2: Categorising offences	9
Step 1: Consider the offence’s design, use, and associated data.....	10
Step 2: Assess the offence’s severity	10
System harm	11
Safety harm	11
Environmental and property harm	11
Step 3: Identify the type of offender the penalty would apply to	12
Step 4: Use the Tool to assign an initial penalty level	13
Classifying harm and assigning points.....	13
Assigning penalties to types of offenders.....	13
Fees and fines	17
Graduated offences	18
Step 5: Check the initial penalty against the remaining two Framework principles	19
Step 6: Refine the financial penalty.....	19
Public policy contextual factors review	20
Section 3: Review and moderation process.....	21
Section 4: Agree final proposed penalty amount	22
Appendix 1 – Harm types/likelihood and classification points.....	23
System Harms	23
Safety Harms	24
Environmental and Property Harms	25
Appendix 2: Penalty scale for harm and types of offenders	26
Appendix 3: Worked Examples	27
Example One - Drivers licensing related offences	27
Example Two - Civil Aviation Offences.....	28

Financial Penalties Categorisation Tool

Introduction

1. Ministry of Transport (the Ministry), in collaboration with the transport regulatory agencies, is a steward for the transport system. This means we take a whole-of-system and proactive approach to maintain our regulatory framework, including taking responsibility for ensuring transport legislation is up-to-date and works effectively.
2. There is an opportunity to improve the way we develop and maintain transport-related financial penalties to help us ensure they are fit-for-purpose. To this end we have developed the Effective Transport-Related Financial Penalties Policy Framework (the Framework), which provides an approach to develop consistent, fair and effective financial penalties in the transport system.
3. This Financial Penalties Categorisation Tool (the Tool) helps apply the Framework to set transport-related infringement fees (fees) and fines applied by a court (fines). The Tool provides a step-by-step categorisation process for determining financial penalty levels in transport legislation.
4. The Tool is a resource for transport regulatory agencies, specifically for setting financial penalty levels. However, it does not override existing more general government guidance on offences and penalties - notably the Legislation Design and Advisory Committee Guidelines¹ (Compliance and Enforcement, chapters 22-27). The Ministry of Justice (MoJ) must also be consulted on all proposals to create new criminal offences or penalties or alter existing ones (contact: offenceandpenaltyvet@justice.govt.nz). MoJ is also available to provide advice on offence and penalty policy issues at any point in the process, and its Policy Framework for New Infringement Schemes² is also available.
5. By applying the Framework and Tool to review and set fees and fines over time across the transport system, we expect fees and fines to become more coherent and better aligned to severity and risk of harm.
6. This document consists of four sections:
 - 6.1. Section 1: explains the background and context and outlines the principles of the Framework, which underlies the Tool.
 - 6.2. Section 2: describes a step-by-step methodology for applying the Tool to a set of offences to determine financial penalty levels.
 - 6.3. Section 3: outlines a review and moderation process for proposed penalties.
 - 6.4. Section 4: indicates the process for confirming a final penalty.
7. Three appendices are included to use to categorise offences:
 - Appendix 1 – to determine offence harm types, severity and likelihood of harm classification, and award points.

¹ <http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/>

² <https://www.justice.govt.nz/assets/Documents/Publications/infringement-governance-guidelines.pdf>

- Appendix 2 – provides penalty amounts related to harm points and different offender types.
- Appendix 3 – provides worked examples of how the Tool can be applied in practice.

Section 1: Background, principles and categorisation informing the Tool

1. The Tool is designed to be used to apply the Framework and its principles, by categorising offences. The Tool is designed to be used when determining financial penalty levels for fees and fines under any transport-related legislation, including all transport modes and for transport-related bylaws.

Principles for effective financial penalties

2. The four Framework principles listed below, and detailed further in the Framework document accompanying this Tool, form the underlying basis to apply the Tool.

Principles for effective financial penalties:

1. Respond to the offence's severity.
2. Act as a deterrent to undesirable behaviour.
3. Be proportionate.
4. Consider the responsibilities and financial capacity of the individual or entity.

3. These principles are designed to achieve more coherent penalty levels across the transport and wider legislative framework. Similar types of offences resulting in similar harm levels, for example, should have similar penalty levels.
4. We expect that applying a principles-based framework will reduce inconsistencies in financial penalties across transport legislation, better link penalties with harm, and help ensure more effective penalties. This may also provide transport providers and participants in the transport system with a clearer picture of where and how their behaviours, responsibilities and accountabilities fit into the transport system and support a safe and effective system.
5. The process of categorising offences builds on the above principles, which also align with several purposes and principles in the Sentencing Act 2002, as noted in the Framework document. The Framework principles are also reflected later in 'Section 2: Categorising Offences' of the Tool, to help with the process of penalty categorisation.
6. Nothing in this document should be seen as overriding the Framework principles for effective penalties. Following these should take precedence where penalty categorisation produces a result that conflicts with the principles.

Categories of offences

7. The Tool identifies 10 categories of offences, from least to most severe in terms of departure from the level of required compliance and potential harm. The 10 categories are designed to offer options for degrees of severity, from minor infringements through to serious harm offences.
8. At categories one and two, the Tool provides a more granular approach for penalty levels (1A, 1B, 2A, 2B). This is predominantly to provide more scope for appropriate penalties

for lower-level land transport (traffic) offences. This recognises that traffic offences make up the bulk of all transport penalties and are also mostly committed by individuals. Consequently, relatively small penalty level variations can have large impacts on how the penalties are viewed by the public, enforced, and the social consequences that can result from unpaid penalties.

9. The penalties categorisation process depends, to an extent, on judgments made about an offence, which can be subjective. This means that it is important to seek expert input from those involved in regulating the area that the offence is addressing, and undertake a moderation process to review final proposed penalties.
10. The penalties for specific offences should align to their potential harm severity category. If an offence is categorised at level one, the financial penalty should align to the dollar figure (see Table one below) for that category. Options for penalties are then determined according to the type of offender recognised by the Framework and Tool: individuals, special regulated individuals, businesses or undertakings³. Offence severity categories and the penalties associated with each type of offender are detailed in Table one.

Table 1: Offence severity categories and penalties by type of offender

Severity Scale:	Category Level:	Individual	Special Regulated Individual	Business or undertaking	Individual	Special Regulated Individual	Business or undertaking
Minor	1A	\$50	\$150	\$500	\$250	\$750	\$2,500
	1B	\$150	\$450	\$1,500	\$750	\$2,250	\$7,500
	2A	\$250	\$750	\$2,500	\$1,250	\$3,750	\$12,500
	2B	\$350	\$1,050	\$3,500	\$1,750	\$5,250	\$17,500
Moderate	3	\$500	\$1,500	\$5,000	\$2,500	\$7,500	\$25,000
	4	\$700	\$2,100	\$7,000	\$3,500	\$10,500	\$35,000
Serious	5	\$1,000	\$3,000	\$10,000	\$5,000	\$15,000	\$50,000
	6				\$10,000	\$30,000	\$100,000
Very Serious	7				\$20,000	\$60,000	\$200,000
	8				\$30,000	\$90,000	\$300,000
Catastrophic	9				\$50,000	\$150,000	\$1,500,000
	10				\$60,000	\$180,000	\$3,000,000

³ The term 'businesses and undertakings' in this context is broadly defined to include commercial entities such as companies, bodies corporate, sole traders, and non-profit 'undertakings' such as councils or charities.

11. The lower potential harm offence categories have the option for a fee, as well as a fine. The more severe categories are for offences that involve more serious potential or actual harm and questions of fact and law more suitable for consideration by a court. Only a fine is assigned for these higher categories of offence. This is because the fee level is not compatible with the seriousness of the offence and a conviction cannot be recorded against an individual's criminal record if a fee exists for the same offence.
12. However, where a fee-level penalty is established there must also be a corresponding fine. This is so that courts can apply a penalty if a decision is taken to prosecute, for example where the non-compliance is considered to be at the more serious end of the scale for that offence.
13. Financial penalty ratio in the Tool levels are, for the most part, as follows:
 - 1:3 - between individuals and special regulated individuals
 - 1:5 - between fees and fines
 - 1:3.3 (approximately) - between special regulated individuals and businesses and undertakings
 - 1:10 - between individuals and businesses and undertakings.
14. There is a variation from these ratios to provide for very serious commercial-level offending at severity levels nine and ten. The higher fines are justified by the potentially catastrophic consequences of offences resulting from commercial-type activity and potentially significant financial resources of commercial entities. Further, imprisonment is not available as a sanction against commercial entities⁴.
15. Legislation Design and Advisory Committee (LDAC) guidance holds that infringement provisions that impose fees in excess of \$1,000 are exceptions to the general LDAC principles and should not operate as precedents for new infringement offences. However, there are exceptions that exist which may justify a higher penalty. In particular, LDAC notes cases with significant financial incentives for non-compliance.
16. The Tool also sets fee levels higher for businesses or undertakings (up to \$10,000). This is to recognise the extra expectations we have of these entities. And, particularly in the case of commercial entities, recognises their likely extra resources and discourages absorbing fees as a 'cost of doing business' (that is, a financial incentive for non-compliance).
17. For offences relating to people who have positions of particular responsibility in the transport system (special regulated individuals), the Tool also sets fee levels higher (up to \$3000). This is to recognise the extra expectation that we have of their behaviour, compared to 'regular' individuals. Examples of such individuals would include the pilot of an aircraft, master of a ship, or holder of a passenger service licence.
18. Fees are only suitable in certain circumstances, and for strict and absolute liability offences, where offences are straightforward, easily established questions of fact and the intent behind offending is not a factor.

⁴ For an individual, very serious offending may have an option of a prison sentence. However, this Tool covers only financial penalties.

Offender groups and associated penalties in offences in legislation

19. In the next section the Tool provides a process for categorising offences and applying penalties to the Tool's three groups of offenders – individuals, special regulated individuals, businesses and undertakings. Proposed penalties increase in relation to each group. As outlined above, we consider this approach supports more effective penalties. However, special regulated individuals and business and undertakings are not explicitly identified in current transport legislation as groups to which different financial penalties can be applied – only 'individuals', 'body corporates' and 'persons other than individuals' are identified.
20. Despite this we do not propose that it is necessary to change transport legislation to specify the Framework's new offender types of special regulated individuals or businesses or undertakings, to implement the Framework. This change could be considered only if redesigning an offence and penalty framework in transport legislation.
21. Without legislative change, it is still possible to apply the Framework's penalty levels relating to special regulated individuals, where offences are only able to be committed by individuals considered to be special regulated individuals (for example, ships' masters). The Framework's penalty levels for businesses or undertakings can also be applied to any offences where a penalty is attached to body corporates. This approach is detailed further under 'Offender categories in legislation' on pages 14-17.
22. Overall, setting financial penalty levels needs to be guided by the parameters of the existing legislation and its offence framework. For fines, courts apply penalties in accordance with the principles in the Sentencing Act 2002 as well as sentencing guideline judgments.
23. The key regarding fines is therefore, as far as possible, to provide adequate range in penalty levels assigned. This is so they are appropriate in relation to the type of offence, while acknowledging that they will be applied taking into account the individual circumstances of offender, and their financial capacity.

Section 2: Categorising offences

1. Drawing on the principles above, this Tool provides a six-step decision-making process to categorise offences, so penalties can be consistently applied.

Step 1: Consider the offence's design, use, and associated data

- select offences to review, considering groups of related offences together
- are the offences clearly articulated and defined?
- can we understand the specific actions and circumstances that constitute the offences?
- how has the offence been applied in the past, how often, and what harm has resulted from the offence?

Step 2: Assess the offence's severity

- the type(s) of harm
- the likelihood of harm should the offence occur
- how severe the consequence is or may be should the harm eventuate.

Step 3: Identify the type of offender the penalty would apply to

- an individual
- an individual in a position of responsibility (special regulated individual)
- a business or undertaking.

Step 4: Use the Tool to assign an initial penalty level

- apply the categorisation tool's suggested levels of penalties to the offences, according to the types and levels of harm and types of offenders, to set an initial penalty level.

Step 5: Consider the penalty against the remaining two Framework principles

- will the penalty act as a deterrent to undesirable behaviour?
- is it proportionate to harm and consistent with similar offences?

Step 6: Refine the financial penalty

- consider, in light of the process at step five, whether there is a need to adjust the harm category and/or add another penalty level
- does the offence need an infringement fee – that is, is it:
 - a strict or absolute liability offence; and
 - not so serious that a conviction should be recorded against the offender
- do a 'public policy contextual factors check' – are there any factors (like a particular offence's likely impact on a vulnerable population group) that make an adjustment to the penalty level appropriate
- does the financial penalty seem appropriate taking all the above steps into account?
- move the penalty up or down a harm category where necessary.

2. The remainder of this section describes, in more detail, the steps listed above to follow to categorise offences to determine penalty levels.

Step 1: Consider the offence's design, use, and associated data

3. **Select an offence or group of offences to review.** It is better to review a group of offences on a certain topic together as these can interrelate - for example, those concerning drink driving or maintaining a vessel. Looking at only one offence in isolation, out of a larger group, means penalties may be set that are disproportionate to other related offences. If only one offence is being reviewed, ensure that it is considered in the context of other related offences that may exist, including in cross-model transport legislation.
4. **Ensure that the wording and intent of the offence, and any other matters relating to it, are clearly understood.** To establish effective and consistent penalties for offences, it must be clear what the offences mean in practice. In some cases this may require expert input as there can be multiple similar variants, acronyms and technical subject matter that need to be clarified, to understand the severity of an offence.
5. If this proves overly difficult or cannot be done, the offence should be considered under a regulatory stewardship process for review, and an appropriate penalty level subsequently set. Alternatively, it might be determined that the offence should be removed from legislation. Irrespective the review process, a more appropriate penalty level could still be set if deemed necessary.
6. **Gather any data on offence use and harm.** To get a clear understanding of the offence to inform the penalty assessment process, it is also useful to gather some data on the offence. This includes data on:
 - how it has been used in the past (that is, to address what specific behaviour)
 - how often
 - the nature of the harm that has resulted from the offence
 - the penalty levels that have been applied
 - whether alternative offences have been used to address the behaviour.
7. This data can then be used to inform the other assessment steps.
8. If new offences are being designed, we recommend reviewing the Legislation Design and Advisory Committee's Legislation Guidelines 2018 – Compliance and Enforcement section⁵.

Step 2: Assess the offence's severity

9. **Document the potential consequences of the offence.** For something to be an offence there must be identified potential consequences that flow from the action or inaction of the individual or entity involved. This consequence must result in harm of some type occurring, or there being a risk of harm occurring.
10. Documenting the consequences of the offence involves identifying the type of harm that may arise from the offence and its severity. This Tool identifies three types of harm – system, safety, environmental and property.

⁵ <http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/compliance-and-enforcement/>.

System harm

- 10.1. This involves breaching transport system requirements that are in place to keep participants safe, protect the environment or property and ensure the system is secure and runs efficiently. These could also be described as 'technical' harms. Common system harms involve offences relating to required transport documents like licences needed to operate vehicles under different circumstances, and having vehicle or operator safety plans or required maintenance records in place. A more serious system harm could be breaching transport security requirements, for example in the aviation sector.
- 10.2. A system harm like not having required document, for example, does not constitute an inherent, tangible harm to people, the environment or property in and of itself. However, the transport system uses such documents as assurance that participants or vehicles, for example, meet required safety standards. Not having a required document therefore compromises the integrity of the transport system and could lead to safety, environmental or property harms as described below.
- 10.3. Breaching system requirements could also result in significant economic loss through 'downstream' negative consequences and reputational loss due to damaging the integrity of the transport system. The Framework and Tool hold that all offences involve some level of system harm because in offending, an individual or entity is breaking a transport system requirement.

Safety harm

- 10.4. This involves tangible harm that has occurred or potentially risks occurring to people. This involves situations where it is evident that action or inaction is inherently dangerous. With safety harms, it is evident that the particular action is dangerous and may result in harm to any people involved be they drivers, passengers, workers or the general public. This includes offences such as not stopping for a red light, or operating vehicles in a dangerous or reckless manner, at inappropriately high speeds, or under the influence of alcohol or other drugs. These actions may, or may not, result in actual harm.

Environmental and property harm

- 10.5. This involves harm that has occurred or may occur to the environment, property or infrastructure. Like safety harm it involves action or inaction that is, or may be, inherently harmful to aspects of the environment or property. This includes actions like allowing the discharge or escape of harmful substances from a ship into the sea, or failing to comply with vehicle noise output standards. Environmental and property harm is a broad category which also includes improper use of property, like parking offences or destruction of property.
- 10.6. Environmental and/or property harm and safety harm to people will often be a risk in the same offence. The severity of this will depend on the offence's nature. However, there will generally be a chance that an incident that results in a vehicle or craft, for example, sustaining damage, will also result in people being harmed or put at risk and vice versa.

11. Any of the above types of harm can be associated with minor or serious consequences, depending on the nature and context of the occurrence. For example, the offence in the Maritime (Offences) Regulations 1998 related to the safe ship management systems (Rule 21.6(4)) states that the master of a ship must ensure a copy of a Document of Compliance (or interim document) is kept on board and produced when requested. This rule relates back to the need for the owner of a ship to implement and maintain a safety management system complying with the International Safety Management Code.
12. In this case, the breach is the lack of a maritime document, which is a system harm. However, further consideration needs to be given to the context of the rule. In this case, the document is a way of showing that a safety management system is in place. The lack of the document could indicate non-compliance with the International Safety Management Code and therefore some safety harm (to people) could also be recorded for the offence.
13. While acknowledging the above, when considering harms that flow from the offence, it is important to focus on what is reasonably likely to occur and not extrapolate to all possible consequences of a particular action. If taken far enough, it is usually possible to connect an action or offence with catastrophic results. However, in legislation, there is often a group of offences relating to a type of action, to indicate degrees of severity.
14. For example, drink driving has several offences relating to increasing levels of blood alcohol and related offending. For each of these offences, there is an increased likelihood of crashing a vehicle compared to driving while sober.
15. The possible consequence for all of these offences is death. However, this is not equally the case for each level of blood alcohol. Therefore, these should be considered as a group, and evidence/expert input should be used to differentiate the level and likelihood of harm occurring from the offence.
16. Appendix 1 provides three tables summarising severity levels of system, safety, and environmental and property harms and (for safety and environmental/property harms) likelihood of their occurrence should the offence occur. These provide descriptions of severity levels for these harms and suggested points that can be applied to classify the harms into severity levels.

Step 3: Identify the type of offender the penalty would apply to

17. **Categorise the type of offender.** The Tool identifies three types of offenders:
 - 17.1. **Individual** – a ‘regular’ individual participating in the transport system with no significant responsibilities or business (commercial) or undertaking interests, such as someone licensed to drive a domestic car, a recreational boat user or a passenger in a vehicle.
 - 17.2. **Special regulated individual** - an individual in a position of responsibility, usually acting in a professional capacity, with special duties such as masters of ships, aircraft pilots, commercial passenger service drivers or holders of dangerous goods endorsements.
 - 17.3. **Business or undertaking** – a sole trader or company (including a corporate body) involved in a commercial enterprise, or a non-commercial operation such as a regional council or a charity.

18. Appendix 2 provides a table with suggested penalty levels applying to the three above types of offender. Penalties increase in line with the expectations on, and likely resources of, these offender types. These offender-related penalties are linked to the harm severity points noted above provided in Appendix 1.

Step 4: Use the Tool to assign an initial penalty level

19. **Use the Tool's harm scale, offender types and associated penalties to assign initial penalties.** This step involves using the Tool's suggested harm types, severity levels and associated points assigned in Appendix 1, and severity scale for types of offenders in Appendix 2, to assign initial penalties. Appendix 3 provides worked examples of offences, applying the categorisation process and penalty levels, to illustrate this process.

Classifying harm and assigning points

20. Using Appendix 1, points should be assigned to the offence according to the type and severity of perceived harm, and, should the offence occur, the likelihood that the identified harm (if safety or environmental/property harm) will result from the offence. Note that the likelihood of whether the offence will occur is not relevant to this process.

21. All offences should be assigned some level of system harm points. The Framework considers any offending is a system harm as it has breached transport system requirements.

22. An offence that is fundamentally a system harm may also still pose additional risks of safety and environmental and property harms that increase the severity of the offence. As outlined in paragraph 10.6 previously, we consider that most, but not all, offences involving safety harm to people will also involve some level of environmental and/or property harms (for example potential damage to a vehicle), even if this is assessed as minor. This will also depend on the nature of the particular offence.

23. Similarly, while it may also be possible there are offences that are assessed as essentially causing environmental and/or property harm, it is more likely these will also include a measure of safety harms. Thus, an offence may be assessed to contain one, two or three harm types:

- system alone
- system and safety or system and environmental and/or property
- all three harms – system, safety, environmental and property.

24. In practice, we consider that many offences will contain a level of all three harms. Once harm points have been determined for the particular offence being considered, these should be added up to determine the overall harm severity category of the offence – between levels one and 10 as represented in Table one on page six.

Assigning penalties to types of offenders

25. Taking the total harm severity points, Appendix 2 can then be used as a guide to determine initial penalty levels associated with the three different types of offenders. There can be more than one selected fee or fine depending on the type of individual or entity expected to commit the offence, and whether the offence is suitable for a lower

level fee-based penalty. However, at least one type of offender should be selected for a penalty.

26. Key questions when considering penalties for different types of offenders are:

- what is our expectation of the level of responsibility of the individual or entity?
- what is the expected level of financial capacity of the individual or entity?

27. If an individual is acting in a professional capacity (a special regulated individual⁶), or the offender is a business or undertaking, we usually have extra expectations of the conduct of that individual or entity, so a corresponding increase in penalty is warranted. We also generally expect commercial entities (body corporates in current transport legislation) to have greater financial capacity than individuals – therefore, higher financial penalties are appropriate to be an effective deterrent and response. The alternative penalty of imprisonment is also not available for businesses or undertakings.

28. Where an offence can only be committed by a single individual (such as where a rule imposes duties on the master of a vessel), also assigning a penalty for a business or undertaking should also be considered. This will mean that where an entity that is a secondary party to an offence (for example by aiding, abetting, counselling or procuring the offence) that entity can be penalised. However, this may need to be achieved by a separate offence targeting the business or undertaking.

29. When considering penalties applying to types of offenders for a particular offence, it is also useful to be aware of whether there may be other offences in the legislation that may apply in addition to, or instead of, the offence in question, in certain situations.

Offender categories in legislation

30. It may not be feasible or necessary to specifically identify the three same categories of offender proposed in the Tool and assign penalties to each. Fewer categories or just those consistent with offender types identified in the current relevant legislation ('individual', 'person' or 'body corporate') may need to be used.

31. This will depend on the make-up of the particular offences and the legislative framework the offences are set in, or ability and desire to alter these. The Tool's offender categories are intended as a guide only. However, despite currently not being explicitly reflected in transport legislation, the Framework penalty levels for special regulated individuals and businesses or undertakings can still be applied without legislative change, aside from replacing penalty amounts.

32. Table two on page 15 sets out how the Framework's penalty levels for individuals, special regulated individuals, and businesses or undertakings would apply to individuals or body corporates as reflected in current legislation, in different situations depending on offence design.

33. This includes situations where the offences would apply to individuals acting, for example, on behalf of voluntary organisations, or voluntary organisations themselves. Neither current transport legislation, nor the Framework, differentiates voluntary organisations for penalty levels. The narrative following Table two explains application of the Framework's offender category penalty levels in these situations in more detail.

⁶ Special regulated individuals typically include people with professional transport roles, who often hold transport system documents or licences, such as a Transport Service Licence.

Table 2: Framework offender category application in current legislation

Offender category in current legislation	Situation, based on offence design	Framework offender category to use		
		<i>Individual</i>	<i>Special regulated Individual</i>	<i>Business or undertaking</i>
Individual	Any 'regular' individual (ie, a member of the public) can commit the offence (eg, jaywalking)	✓		
	Any individual, whether 'regular' or specially regulated, can commit the offence	✓		
	Only an individual holding a specially regulated role in the transport system can commit the offence (eg, requirement of ship's master)		✓	
	An individual acting on behalf of a organisation that isn't a body corporate (and doesn't hold a specially regulated role in the system) can commit the offence	✓		
	An individual acting on behalf of a organisation that isn't a body corporate (BUT does hold a specially regulated role in the system) can commit the offence		✓	
Body corporate	Any body corporate can commit the offence			✓
	Only body corporates that have significantly less capacity to pay penalties than the average body corporate in the sector (for example, small voluntary groups) can commit the offence	✓	✓	

Individuals (Individuals, special regulated individuals, and undertakings that are not body corporates)

34. Where an offence can be committed by any 'regular' individual (that is, a general member of the public), the Framework's individual-level penalties will appropriately apply. Where an offence could be committed by either an individual or a special regulated individual, we recommend that the lower level individual penalty is also applied, so that the penalty level is not inappropriate for 'regular' individuals.
35. Where offences can only be committed by individuals in special regulated individual-type roles, like ship's masters, the penalty level for special regulated individuals can appropriately apply. In this case the offence legislation would still refer just to individuals.
36. Where offences can be committed by individuals acting on behalf of organisations that are not body corporates (for example, smaller voluntary organisations/undertakings with no or few paid employees), the Tool's individual or special regulated individual level penalties will appropriately apply.
37. With no corporate to take responsibility, under current transport legislation these penalties would apply to the individuals in these organisations who offended. However, the organisation could decide to reimburse those held liable by seeking contributions from members, to spread the liability more broadly and/or use its assets to cover penalties.
38. In the above situation, unless the offences were associated with the individual operating under a transport system authorisation, such as an operating licence, we recommend that the Tool's 'regular' individual-level penalties should apply. If the offences were associated with the individual operating under a transport system authorisation, it may be appropriate to apply the special regulated individual-level penalties.
39. However, current primary transport legislation enabling offence establishment and design does not explicitly distinguish applying penalties on the basis of association with transport system authorisations, nor in relation to voluntary organisations. Therefore, applying the Framework's penalty levels as described above will depend on the particular design of current offences, or the potential and desire to re-design these in future, which may require amending primary legislation.

Body corporates (businesses and undertakings that are body corporates)

40. Generally, where an offence has a designated financial penalty for body corporates or one is established, we would expect the Tool's business or undertaking-level penalties to apply.
41. This means that under current transport legislation, even very small organisations (for example voluntary organisations with few or no paid employees) that are body corporates could face business or undertaking-level penalties. However, this may only be an issue regarding fees, which are at fixed levels in legislation, but which are also set relatively low, mitigating the problem.
42. In current transport legislation there is no ability to differentiate, for example, between a commercial body corporate created to make a profit and an incorporated not-for-profit all volunteer charity. Either (or with a 'mid-range' fee, both) the charity may pay a fee greater than that generally considered appropriate; or the commercial corporate may pay a fee lower than that generally considered appropriate.

43. Fines are able to be applied up to a maximum level. Therefore the court has discretion to consider various factors relevant to the gravity of the offending, having regard to the offender's level of responsibility and knowledge, and can consider financial capability, and apply a fine level accordingly. Consequently, despite an organisation being a body corporate, the court may impose a lower or no fine (for example, for an all volunteer charity).
44. Irrespective of the above, there may be situations where regulators consider that applying business or undertaking-level financial penalties to particular body corporates may be counterproductive. This could be in situations where body corporates have significantly less capacity to pay penalties than the average body corporate in the sector (for example, small voluntary groups). Ways to address this include:
- designing offences where, for example, voluntary and non-voluntary organisations are distinguished, enabling different penalty levels (for example, applying individual or special regulated individual level penalties to voluntary organisations rather than business or undertaking-level penalties)
 - using discretion in not applying the financial penalty
 - revoking or placing conditions on authorisations, for those organisations operating under a transport system authorisation, instead of a financial penalty.

Fees and fines

45. Assigning fee-based penalties is useful for straightforward, less serious offences that do not warrant court proceedings, convictions or substantial penalties. However, not all offences are appropriate for fees. In determining whether an offence should have a fee option, MoJ guidance states that a fee-based penalty scheme should:
- address misconduct that is generally regarded as being of comparatively minor concern to the general public, but may address more serious matters provided the following considerations also apply:
 - involve actions or omissions that involve straightforward issues of fact
 - only apply to strict or absolute liability offences
 - be an appropriate mechanism or part of an appropriate mechanism to encourage compliance with the law.
46. Therefore, in considering whether a fee-based penalty is suitable, it is useful to ask the following questions:
- 46.1. **Is it a strict or absolute liability offence?** - This means an offence where the state of mind, regarding intention to offend, or knowledge of committing an offence (*mens rea*) of the offender (including negligence, recklessness or wilful intention to offend) is not important for prosecuting the offence. A common example of this is a speeding offence. Proof from a speed camera, for example, that an offence has occurred is considered enough for a fee to be issued. It is not necessary to prove that the offender deliberately intended to speed or knew they were speeding when the offence occurred.
- 46.2. **Is the offence comparatively minor?** - If the offence is severe enough that an offender should incur a substantial penalty, for example more than a \$1000 fee for

a 'regular' individual, imprisonment, or receive a criminal record, then it is not suitable for a fee and should be a fine. To be suitable to be a fee, the offence should be in the Tool's severity category of one to five and not higher, as noted in the offence category Table one on page six and in Appendix 2.

47. When deciding whether a fee is appropriate, it is important to recognise that an individual cannot receive a conviction for an offence that includes a fee as a penalty option. In this case a serious offender who is prosecuted and fined would not have to declare a conviction subsequently in relation to a 'fit and proper person' test.
48. This situation may also preclude future prosecutions for other offences by the same person. This is because lack of a criminal conviction means no criminal history is available. However, enforcement or regulatory agencies may need to consider a person's criminal history to apply the 'public interest' test for prosecution, and a court would also take this into account in sentencing.
49. A more full discussion of appropriate circumstances for fee-based penalties is covered in the MoJ policy framework for new infringement schemes⁷ and the LDAC Guidelines, Chapter 25, 'Creating infringement offences'⁸.
50. Finally, if a fee is considered appropriate, an associated fine must always also be provided. This is because, where an infringement fee is, for example, not paid and the case moves to court for whatever reason, there must be a fine available as the fee no longer applies. Otherwise a penalty will not be available. The case deciding this was *Nelson City Council v Howard* in 2004⁹.

Graduated offences

51. Offences that include increasing levels of penalties (graduated offences), need special attention due to their complexity. Graduated offences include speeding, blood alcohol level and overweight vehicle offences in the Land Transport Act 1998. In these types of offences, penalty levels are determined according to the level of offending occurring over set limits - that is, level of alcohol in the blood, excess speed or extent to which the vehicle is overweight.
52. When reviewing graduated offences we recommend taking the following process:
 - take the top and bottom ends of the penalty scale, and process these in the same way as other offences using the Tool
 - next review the number of gradations on the scale – to ensure simplicity and clarity, there should be as few as possible
 - finally, using the top and bottom ends of the scale as a guide, assign the intermediate steps to a penalty level.

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

⁸ <http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/compliance-and-enforcement/chapter-25/>

⁹ High Court of New Zealand, Nelson Registry CRI-2004-042-0220. As reported in the New Zealand Administrative Reports (NZAR) as [2004] NZAR 689.

Step 5: Check the initial penalty against the remaining two Framework principles

53. **Consider whether the penalty will deter undesirable behaviour and is proportionate.** Step five involves assessing the initial penalties set against the remaining two principles (the other principles having been captured in previous steps):

53.1. ***Deter undesirable behaviour*** – key aspects to consider to help ensure that a penalty will be effective at deterring unwanted behaviour include the penalty being:

- reasonably linked to the offence’s harm level – this means the extent of potential harm is more likely to be understood and the behaviour less generally accepted
- sufficiently high relative to the perceived benefits of offending, so that it is more likely people will be deterred from offending
- well aligned with the context and type of behaviour and type of potential offender – different types, configurations and levels of penalties (for example the consideration of non-financial penalties like licence suspension) will be more appropriate for different offenders.

53.2. ***Be proportionate*** – relating to consistency and fairness. This is the concept that penalties should be proportionate and similar across different offences, transport modes and wider legislation in other sectors, in relation to severity and likelihood of harm and offenders that penalties apply to. Offences with similar levels and risks of harm applied to similar types of offenders should incur similar penalties.

53.3. Unless done under previous steps, ensuring proportionality will involve a targeted review of offences and penalties in the relevant Act and regulations the penalties are sited in, and relevant offences across transport modes, in wider relevant legislation, and considering international best practice for the type of offence¹⁰.

Step 6: Refine the financial penalty

54. **Consider, from the process at step five, if adjustments need to be made to the harm category or penalty levels.** Is there a need for extra deterrence, or to better address the penalty’s proportionality, given the nature of the offence? Changes should be based on clearly identified reasoning and preferably evidence. If there is a need, move up or down one harm category, noting the reasons why. If there is a need to move the offence more than one category, this may indicate an error with the categorisation process.

55. It is important to note that the selection of harm points relates only to the severity of the offence. As discussed in Section 1, there are several additional considerations that might mean that this initial categorisation should be modified. These mainly relate to relevant

¹⁰ The mere lack of alignment between similar types of offences does not mean that the categorisation of the offence in question needs to change. It may instead indicate that there are wider issues with other offences in the system. If this is judged to be the case after penalty moderation, those offences should be referred for assessment under a regulatory stewardship programme.

external contextual factors (such as relative levels of parking fees, or the financial benefit expected from overloading a vehicle and therefore the appropriate penalty level to be a deterrent), and wider considerations of unintended consequences of applying a fee or fine.

Public policy contextual factors review

56. A final overarching consideration in refining the proposed penalty level is to consider its' appropriateness in its wider public policy context. This is to determine whether there are factors in applying a penalty level that may lead to unintended outcomes.
57. This could, for example, relate to vulnerable population groups' inability to pay penalties, where that group has a particular propensity to commit a certain offence. In such a case it may be appropriate on public policy grounds to adjust a penalty slightly downwards. Conversely, we may consider that a penalty needs to be slightly increased. This may be because the predominant offender group generally has significant financial resources or particularly serious responsibilities, due to the nature of their participation in the transport sector.
58. However, penalty levels set in legislation cannot directly account for the financial circumstances of different offenders. Fees, being a set amount, address this by being set relatively low due to being associated with less serious, straightforward offences (although what is 'low' will differ for different offender groups).
59. Therefore, the enforcement approaches of regulators and enforcement agencies will likely have more influence to account for offenders' ability to pay or other circumstances, than actual penalty levels. This is due to their ability to use discretion in whether and how to apply financial penalties, or substitute alternative penalties. The design of offences to avoid perverse outcomes is also relevant.
60. For fines, set up to a maximum, the court process allows judges discretion in setting penalties to account for financial circumstances, among other matters. Therefore, the level at which fines are set in legislation is relevant in this context only as it will determine the range of the penalty that the court will work within.

Section 3: Review and moderation process

1. Once the steps in 'Section 2: Categorising offences' have been followed to produce a proposed penalty or group of penalties, a final review and moderation process is necessary. We intend that an 'in-house' Financial Penalty Review Panel (the Panel) will undertake this process. In the absence of the Panel, the process should be undertaken by at least one person not involved in the original penalty categorisation.
2. The purpose of the review and moderation process is to have an overarching look for mistakes and inconsistencies with the categorisation process, and instances where the proposed offence does not appear to align with the Framework principles set out in Section 1.
3. Steps that the process should take include, but not be limited to, reviewing:
 - any decision to set infringements that exceed LDAC and MoJ guidelines
 - any infringements that do not have associated fines – this is not acceptable for court process
 - any decision to increase or decrease an offence harm category from its original level in Step 6
 - the proposed offence(s) in light of other relevant offences both within and across transport modes, as well as more generally across relevant New Zealand legislation, and international best practice for the type of offence:
 - this should be targeted rather than a broad review of all possible legislation
 - look for other transport offences of a similar nature (for example, in relation to maritime offences, offences involving loading dangerous goods onto a boat, in comparison to similar offences involving a truck)
 - compare the offences and penalties with others in the same legislative instrument (there should be a measure of coherence between them)
 - where relevant, compare with other relevant non-transport legislative regimes (for example, HSWA).
4. The Panel should meet with the adviser/team of advisers who have submitted the penalty levels for review, and provide written feedback in advance. More than one meeting may be required if, as a result of the Panel's original feedback, further work is needed.

Section 4: Agree final proposed penalty amount

1. Once the final review and moderation is complete the final penalty levels can be confirmed.
2. Any significant deviations from the original framework categorisation process arising from the review and moderation process should be recorded for future reference. The penalty amounts should now be ready to be put forward for the legislative change process.

Appendix 1 – Harm types/likelihood and classification points

System Harms

System harms arise from offences which cause harm by breaching the requirements of the transport system themselves, which support a safe, secure and effective system – for example, driving a vehicle while not being properly licensed. These harms do not directly negatively impact people, the environment or property at the time. However, they pose a risk as they involve not adhering to transport system requirements designed to ensure safety and effectiveness.

Table three below sets out severity levels for system harm offences and associated points.

Table 3: System harm severity

Severity	Offence descriptor	Points
None	This offence does not relate to any failure to adhere to licensing, testing, maintenance, documentation or other similar requirements.	0
Low	Minor and procedural failure to comply with transport requirements, risking minor harm. May be suitable for an infringement fee. Alternatively, predominantly an offence involving inherently harmful behaviour, which will incur higher safety and/or environmental and property harm points.	5
Medium	Less serious failure to hold appropriate licence or certificate, carry out test, provide information or similar. May be suitable for an infringement fee. Alternatively, predominantly an offence involving inherently harmful behaviour, which will incur higher safety and/or environmental and property harm points.	10
High	Failure to hold appropriate licence or certificate, carry out test, maintenance, provide information or similar. Breach of a security requirement. Failure to pay a fee or levy. Risk of some economic loss and reputational damage to the transport system.	20
Very High	Serious failure to hold appropriate licence or certificate, carry out test, provide information or similar, risking serious harm. Serious breach of a security requirement. Ongoing failure to pay a fee or levy. Risk of serious economic loss and reputational damage to the transport system.	35
Extremely High	Deliberate falsification or concealment of failure to comply with requirements. Deliberately obscuring information or documentation. Deliberate breach of a security requirement. Risk of significant economic loss and major reputational damage to the transport system.	51 ¹¹

¹¹ Set at 51 points, rather than 50, so that an extremely high-level system offence which incurs no other harm-type points will not be suitable for an infringement fee – see Appendix 2, Table 6.

Safety Harms

Safety harms arise from offences which involve inherently dangerous action or inaction and have either directly caused or risk directly causing harm to people. These include offences such as failing to give way, driving the wrong way on a one-way road, or operating a vehicle or craft under the influence of alcohol or with excessive speed. Table four below provides severity levels for safety harm, with likelihood of harm occurring and associated points.

Note that for safety and environmental or property harm (outlined further below), we assign points based on the likelihood of the harm occurring should the offence occur; not on the likelihood of the offence itself occurring.

Table 4: Safety harm severity and likelihood of harm occurring

Severity		Likelihood of harm occurring ¹²			
Grade	Offence descriptor ¹³	Low	Medium	High	V High /Occurred
None	No risk of, or actual, safety-related harm	0	0	0	0
Low	Offence which may cause, or caused, minor injury	5	10	15	20
Medium	Offence which may cause, or caused, moderate injury	10	15	20	30
High	Offence which may cause, or caused, death or serious injury to between one and 10 people	15	20	30	40
Very High	Offence which may cause, or caused, death or serious injury to more than 10 people	20	30	40	50

¹² The likelihood of the harm occurring should the offence itself occur.

¹³ Note that the descriptor harm examples are given only as a guide or proxy to assess offence harm grade. The examples are not meant to imply that the offence must be certain to cause the result described, to get the associated harm grade.

Environmental and Property Harms

Environmental and property harms arise from offences which involve action or inaction which directly causes or risks causing harm to the environment, property (including improper use of property) or infrastructure. These include offences such as discharging hazardous substances into the environment, damaging property through improper use of a vehicle, or parking offences. Table five below provides severity levels for environmental and property harm, with likelihood of harm occurring and associated points.

Table 5: Environmental and property harm severity and likelihood of harm occurring

Severity		Likelihood of harm occurring			
Grade	Offence descriptor	Low	Medium	High	Very High /Occurred
None	No risk of, or actual, environmental or property harm	0	0	0	0
Low	Offence which may cause, or caused, minor environmental or property harm (eg, damage to/loss of one-two cars or a small recreational boat, excessive vehicle noise)	5	10	15	20
Medium	Offence which may cause, or caused, moderate property or environmental harm (eg, loss of a small-medium sized aircraft or medium sized ship, limited dangerous goods contamination)	10	15	20	30
High	Offence which may cause, or caused, serious property or environmental harm (eg, loss of a large commercial passenger jet or large ship, train derailment, contamination of a lake)	15	20	30	40
Very High	Offence which may cause, or caused, extreme environmental or property harm (eg, extensive oil spill damaging entire marine environment or coastline, destruction of an entire inner city precinct)	20	30	40	50

Appendix 2: Penalty scale for harm and types of offenders

Table six below provides a proposed overall penalty scale with recommended penalty amounts, linked to harm category from points awarded (in Tables three-five), and types of offenders.

Harm category's one and two are broken down to a greater degree of granularity (levels 1A, 1B, 2A, 2B). This is primarily to allow appropriately stepped penalty levels for the significant number of lower severity land transport-related (traffic) offences committed.

Table 6: Penalty scale for harm and types of offenders

Harm category	Points	Fee			Fine		
		Individual	Special Reg Ind ¹⁴	Business or undertaking	Individual	Special Reg Ind	Business or undertaking
1A	Up to 10	\$50	\$150	\$500	\$250	\$750	\$2,500
1B	11-15	\$150	\$450	\$1,500	\$750	\$2,250	\$7,500
2A	16-20	\$250	\$750	\$2,500	\$1,250	\$3,750	\$12,500
2B	21-25	\$350	\$1,050	\$3,500	\$1,750	\$5,250	\$17,500
3	26 - 30	\$500	\$1,500	\$5,000	\$2,500	\$7,500	\$25,000
4	31 - 40	\$700	\$2,100 ¹⁵	\$7,000	\$3,500	\$10,500 ¹⁶	\$35,000
5	41 – 50	\$1,000	\$3,000 ¹⁷	\$10,000	\$5,000	\$15,000 ¹⁸	\$50,000
6	51 – 70	N/A	N/A	N/A	\$10,000	\$30,000	\$100,000
7	71 -90	N/A	N/A	N/A	\$20,000	\$60,000	\$200,000
8	91-110	N/A	N/A	N/A	\$30,000	\$90,000	\$300,000
9	111-130	N/A	N/A	N/A	\$50,000	\$150,000	\$1,500,000
10	131-150	N/A	N/A	N/A	\$60,000	\$180,000	\$3,000,000

¹⁴ Special Regulated Individual.

¹⁵ Note this penalty level is above maximum amounts currently allowed in transport regulations for fees, with limits of \$2000 (individual) and \$12,000 (body corporate). Therefore, the lesser limits will apply.

¹⁶ Note this penalty level is above maximum amounts currently allowed in transport regulations for fines, with limits of \$10,000 (individual) and \$50,000 (body corporate). Therefore, the lesser limits will apply.

¹⁷ See note 15.

¹⁸ See note 16.

Appendix 3: Worked Examples

Two sets of examples of using the Tool's categorisation process and tables to set penalties for offences are provided below.

Example One - Drivers licensing related offences

There are several offences related to driver's licences under the Land Transport Act 1998 and associated Land Transport (Offences and Penalties) Regulations 1998. Examples are summarised in the table below and include offences due to not having an appropriate licence, not producing it when asked, driving contrary to specific conditions of a licence, and driving while suspended.

Table 7: Drivers licensing-related offences summary

Section	Offence
Land Transport Act 1998	
32 (1) (c)	Driving while licence suspended or revoked
Land Transport (offences and Penalties) Regulations 1998	
31(1)(a)	Driving without appropriate current driver licence
31(1)(b)	Driving contrary to conditions of driver licence
31(1)(c)	Failing to produce driver licence

Applying the categorisation tool has produced the following harm points and penalties.

Table 8: Drivers licensing-related harm points and penalties

Section	Offence	Notes on usage, interpretation	Categorisation	Harm Points	Fees and max fines for individuals
Land Transport Act 1998					
32(1)(c)	Driving while licence suspended or revoked	The individual had a licence but it has been removed due to offending.	High level system harm – the individual should know they have been suspended. Suspension would indicate they are less competent, risk prone or reckless. Higher level safety harm. Possibility of medium level environmental and/or property harm.	System - 20 Safety - 30 Env/prop ¹⁹ – 20 Total – 70	\$10,000 fine

¹⁹ Environmental and/or property harm.

'Section	Offence	Notes on usage, interpretation	Categorisation	Points	Fees and max fines for individuals
Land Transport (offences and Penalties) Regulations 1998					
31(1)(a)	Driving without appropriate current driver licence	Need to clarify if this includes restricted vs full licence, no licence, or licence lapsed.	System harm – individual is not respecting the licensing system. Safety harm – they may not be a competent driver depending on why they do not have a licence.	System – 20 Safety - 10 Env/prop – 10 Total – 40	\$700 fee \$3,500 fine
31(1)(b)	Driving contrary to conditions of driver licence		Medium level safety, system and env/prop harm. The individual may not be competent to drive in the vehicle or situation they are in.	System – 10 Safety – 10 Env/prop - 10 Total – 30	\$500 fee \$2,500 fine
31(1)(c)	Failing to produce driver licence	Appears that the individual has a licence but forgot to carry it on them. Police can ID driver by other means.	A very minor and procedural system harm. No safety or env/prop harm.	System – 5	\$50 fee \$250 fine

Example Two - Civil Aviation Offences

The Civil Aviation Act 1990 contains a wide range of offence provisions relating to the conduct of participants in the civil aviation system. The offences span behaviours ranging from failure to meet compliance obligations, provision of false or misleading information or acting without regulatory approval, through to acts causing unnecessary danger to people or property.

These provisions have been carried over to the Civil Aviation Bill, for the purposes of which the financial penalties have been reviewed using the Tool. Examples of the different types of offences in the legislation are provided in Table nine.

Table 9: Civil aviation offences summary

Civil Aviation Bill/Act clause/section		Offence
Bill	Act	
20	52C	Failure to provide identifying information (about pilot in command alleged to have committed an offence)
39	43A	Operating aircraft in careless manner
40	44	Dangerous activity involving aircraft, aeronautical product or aviation-related service
42	56	Communicating false information relating to safety
97	43	Endangerment caused by holder of an aviation document
98	46	Acting without necessary aviation document
101	49	Communicating false information or failing to disclose information relevant to granting or holding of aviation document
104	46A	Acting without required medical certificate
109	52B	Failure to notify accident or incident
282	44A	Failure to comply with inspection or monitoring request

The summarised results of applying the Tool to the above provisions are set out in Table ten below. In each instance, the maximum penalty for offences by an individual has been set at the level for a special regulated individual. This is because of the particular responsibilities that aviation participants have for the safety of other individuals, aircraft and other property affected by their actions.

Table 10: Civil aviation offences harm points and penalties

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
20	52C	Failure to provide identifying information about pilot in command	Non-identification of an offending pilot could mean that an individual whose conduct presents a risk to aviation safety could evade the consequences of their offending conduct and continue to operate within the system without sanction. The offending is serious from a system perspective: it involves active concealment in relation to an alleged offence, which could, for	System – 51 Safety – 15 Env/prop – 15 Total - 81 ²⁰	Special Reg Individual \$30,000 Business or undertaking \$100,000

²⁰ Note that 81 points places the offence in harm category seven of the Appendix 2 penalty scale. However, in this case a process of reviewing the penalty level in relation to the Framework principles, and comparison with other offences, has led to a decision to drop the penalty down a level to category six – hence the lower fines.

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
			example be an offence involving unnecessary endangerment.		
39	43A	Operating aircraft in careless manner	<p>The offence captures actions which involve a level of care or attention that falls short of a standard that, in the circumstances, would reasonably be expected of the person at fault. However, the action does not involve conduct that can be categorised as causing unnecessary danger to any other person or to property. It nevertheless involves an elevated risk of an accident involving the aircraft, with a high potential risk of harm to those on board and of damage to the aircraft and other property.</p> <p>An effective deterrent is necessary to prevent erosion of system safety by, for example, persistent low level offending due to a perception that the risk of detection is low and the likely penalty in the event of detection is nothing to be feared.</p>	System - 10 Safety - 30 Env/prop - 20 Total - 60	Special Reg Individual \$30,000 Business or undertaking \$100,000
40	44	Dangerous activity involving aircraft, aeronautical product or aviation-related service	<p>Potential harms in aviation can self-evidently be catastrophic in terms of harm to people and property if they result in a serious aircraft accident.</p> <p>Such harms can flow from a wide range of actions, for example a decision by a pilot or air traffic controller, a safety inspection that disregards a critical fault or from a more complex pattern of systemic failure resulting from neglect or deliberate inaction.</p> <p>Financial penalties must be meaningful for the full range of parties whose non-compliant actions could result in harm to others. Penalties need to be sufficiently high to avoid a situation where there is an economic incentive to offend because paying a fine is cost effective.</p>	System - 20 Safety - 50 Env/prop - 50 Total - 120	Special Reg Individual \$150,000 Business or undertaking \$1,500,000

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
42	56	Communicating false information relating to safety	<p>The integrity of the civil aviation safety system relies on the disclosure, exchange and recording of accurate, reliable information relating to the safety of participants in, and the working components of, the system.</p> <p>False information compromises the integrity of the safety system, so a very high standard of care applies to any person who provides information knowing that it will influence critical decisions that could have life and death consequences if based on misleading information. False information could conceal a design flaw, component failure, maintenance deficiency or defective operational procedure that almost certainly would result in serious harm in the absence of remedial action that the recipient of the information could otherwise have taken. Offending could result in a person being permitted to perform safety-critical tasks for which they are not qualified. The deliberate or reckless actions involved in the offence add an aggravating factor, given that the offender knows in advance, or should have known in advance the potential consequential of their actions.</p>	<p>System - 51</p> <p>Env/Prop - 30</p> <p>Safety - 30</p> <p>Total - 111</p>	<p>Special Reg Individual \$150,000</p> <p>Business or undertaking \$1,500,000</p>
97	43	Endangerment caused by holder of an aviation document	<p>Potentially catastrophic harm to people and property can result from offending conduct if it results in a serious aircraft accident.</p> <p>The very fact that a person is required to hold a document reflects that, for activity or service to which the document relates, regulation is necessary to manage risks to other people and to property if not performed competently and according to the relevant regulatory requirements.</p> <p>Dangerous conduct by a document holder displays very serious failure to fulfil their responsibilities as a person that the civil aviation system has entrusted to undertake</p>	<p>System - 35</p> <p>Safety - 50</p> <p>Env/prop - 50</p> <p>Total - 135</p>	<p>Special Reg Individual \$180,000</p> <p>Business or undertaking \$3,000,000</p>

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
			an activity or service competently and safety.		
98	46	Acting without necessary aviation document	<p>The aviation document is central to the regulator's control of entry into, participation in and exit from the aviation safety system. Aviation documents are evidence that the person or thing in respect of which the document is held has, as the case may be, the competence, qualifications, skill, resources, or meets the necessary standards, for conformity with safety requirements of the Act and rules. The aviation document identifies the holder to the regulator for monitoring, compliance and enforcement purposes.</p> <p>Offending carries a high degree of untreatable risk that may not be detected until it manifests in a serious accident or incident. This defeats the purpose of a safety system designed to manage risk pre-emptively through the aviation document regime and associated requirements.</p>	System - 51 Safety- - 30 Env/prop - 15 Total - 96	Special Reg Individual \$90,000 Business or undertaking \$300,000
101	49	Communicating false information or failing to disclose information relevant to granting or holding of aviation document	<p>The integrity of the aviation safety system relies on the regulator having all the information necessary to establish whether the applicant for an aviation document meets the prescribed requirements to exercise the privileges of the document and is a fit and proper person to do so. Once a person has entered the system as a document holder, system integrity relies on the disclosure of information about any change in circumstances that affects or may affect the person's continuing ability under section 70 to satisfy the fit and proper person test for an aviation document holder.</p> <p>A person who obtains a document without disclosing full information or who no longer meets fit and proper person requirements poses risks commensurate with the significance of the information that they have failed to disclose and the nature of the activity to which it</p>	System - 51 Env/prop - 10 Safety - 20 Total - 81	Special Reg Individual \$60,000 Business or undertaking \$200,000

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
			relates, which, depending on the nature of the information, may be significant.		
104	46A	Acting without required medical certificate	<p>Evidence of an aviation participant's medical fitness is an essential complement to evidence of their technical competence to operate an aircraft or undertake other aviation activities in circumstances where a medical event could result in an accident or serious incident. The aviation safety system relies on the honest, timely disclosure of medical conditions and compliance with any relevant requirements that the Director may have imposed. Non-disclosure of medical information subverts the system.</p> <p>A person who obtains an aviation document without disclosing full medical information or who no longer meets medical requirements poses risks commensurate with the nature of medical condition that has been concealed.</p>	System - 51 Safety - 15 Env/prop - 10 Total - 76	Special Reg Individual \$60,000
109	52B	Failure to notify accident or incident	<p>The obligation to report accidents and incidents is an important element of the aviation safety system. Notifications allow the Director and CAA to take prompt compliance action and initiate investigations into the cause of an occurrence. Information derived from notifications and investigations informs the CAA's understanding of risk in the aviation sector.</p> <p>While the offence relates to actions after an accident or incident has already occurred, un-notified incidents, in particular, may mean that valuable safety information does not come to the attention of the CAA for appropriate action.</p>	System - 51 Env/prop - 10 Safety - 10 Total - 71	Special Reg Individual \$60,000 Business or undertaking \$200,000
282	44A	Failure to comply with inspection or monitoring request	The Director's inspection and monitoring powers are fundamental to the effective oversight of compliance with aviation safety and security requirements under the Act and rules. It is through these powers that the Director and the CAA are able to monitor individual	System - 51 Safety - 15 Env/prop - 10	Special Reg Individual \$60,000 Business or undertaking \$200,000

Clause		Offence	Consequences	Points	Max fine
Bill	Act				
			<p>operators' compliance and performance, read the health of the aviation safety and security system and identify the need for remedial action or enforcement.</p> <p>Conduct that impedes the identification of and action on safety or security problems within an air operation has the potential to result in significant damage to property or death or injury to those on board an aircraft, although the likelihood of such an event is low</p> <p>Non-compliance may allow a person to conceal matters affecting safety or security that could have been detected by immediate compliance with Director's requirements under s.268.</p>	Total - 76	