

Chair
Cabinet Finance, Infrastructure and Environment Committee

Changes to the Health and Safety in Employment Act: Infringement Offence Notices

Executive summary

- 1 The Health and Safety in Employment Act 1992 (HSE Act) currently provides Health and Safety inspectors (HSE inspectors) with a range of enforcement tools. However, a financial penalty for non-compliance can only be imposed following a successful prosecution.
- 2 This paper proposes the creation within the HSE Act of Infringement Offence Notices (IONs) to:
 - complement the range of enforcement tools currently available under the Act, allowing for a more effective range of graduated responses to breaches of the Act; and
 - ensure compliance for those breaches that do not warrant pursuing a full prosecution.Other proposals relating to enforcement under the HSE Act are discussed in a separate paper, 'Changes to the Health and Safety in Employment Act: Effective Enforcement Proposals'.
- 3 Under the IONs proposal, an HSE inspector could issue a notice requesting payment of a financial penalty for a breach of the HSE Act or regulations by a person where:
 - the person had received prior warning of their non-compliance; and
 - the breach is clear-cut and obvious.
- 4 Two options have been identified for assessing ION penalty levels: under Option 1, ION penalty levels would be based on the degree of harm that *actually* resulted from a breach of the HSE legislation; under Option 2 ION penalty levels would be based on the degree of harm that actually resulted *or was likely to have resulted* from the breach of the HSE legislation.
- 5 Under either option, ION penalties would range from \$100 to \$800 for individuals (eg, self-employed person; employee) and \$500 to \$4,000 for a body corporate, depending on the level of harm involved.
- 6 A person issued with an ION would have the choice of paying the penalty or requesting a Court hearing on the offence. Full prosecution would continue to be an option in all situations where an ION was not used, but would tend to be reserved for offences involving more serious injuries or death and/or persistent non-compliance. A person would not be liable to full prosecution for the same breach (ie, involving the same set of facts on the same date) for which they were issued an ION.
- 7 The cost of implementing these amendments is:
 - For Option 1: Vote Labour \$0.072 million in 2001/02, \$0.524 million in 2002/03, \$0.234 million in 2003/04, and \$0.237 million in outyears (operating cost), \$0.028 million in 2002/03 (capital cost), and \$0.247m in 2003/04 and outyears (net crown revenue); and Vote Courts \$0.018m in 2003/04 and outyears (operating cost), \$0.240m in 2003/04 and outyears (net crown revenue);
 - For Option 2: Vote Labour \$0.072 million in 2001/02, \$0.524 million in 2002/03, \$0.234 million in 2003/04, and \$0.237 million in outyears (operating cost), \$0.028 million in 2002/03 (capital cost), and \$0.247m in 2003/04 and outyears (crown revenue); and Vote

Courts \$0.021m in 2003/04 and outyears (operating cost), \$0.350m in 2003/04 and outyears (net crown revenue).

Background

- 8 HSE inspectors currently have the following tools available when enforcing the HSE Act:
- providing information and advice to help employers comply with the Act or regulations;
 - issuing oral or written warnings accompanied, where appropriate, by information and advice;
 - issuing Improvement Notices, requiring non-compliance to be corrected within a specified time;
 - issuing Prohibition Notices, requiring the use of plant, a process or a workplace to be suspended until compliance has been achieved; and
 - prosecution under the Act.
- 9 Infringement offences applicable to the New Zealand workforce are already found in the Resource Management Act 1991, the Land Transport Act 1993 and the Hazardous Substances and New Organisms Act 1996.

Summary of submissions

- 10 The public document 'Discussion Paper on the Review of the Health and Safety in Employment Act' (Discussion Paper), released in December 2000, proposed the introduction of infringement offences and infringement fees as an additional enforcement mechanism. Submissions on the proposal were received from various groups including employers, government organisations, health and safety professionals, interest groups, unions and sector/employer groups. Submissions were divided, with almost equal numbers indicating support, opposition, and conditional support.
- 11 Of those submissions that indicated support:
- a number believed that infringement offences would be an effective incentive or deterrent;
 - many submissions believed that infringement offences are preferable to prosecution, as there are lower associated costs; and
 - others believed that infringement offences would encourage employers and employees to take responsibility for workplace health and safety.
- 12 However, a number of submissions expressed reservations, including that:
- the proposal emphasises punishment, rather than correction of an unsafe situation;
 - infringement offences would be regarded primarily as a revenue mechanism;
 - infringement offences targeting specific minor offences would not take all circumstances into account, and would treat issues in isolation; and
 - the proposed penalty levels (\$100 for employees, \$1,000 for employers) were too low to be effective.
- 13 The two main recommendations of submissions were that offences should be clearly identified (although two submissions believed some discretion was necessary), and that the system itself must be consistent.

Comment

- 14 The HSE Act currently provides HSE inspectors with a range of enforcement tools; however, a financial penalty can only be imposed following a successful prosecution.

- 15 Prosecution is a severe means of ensuring compliance, resulting in a criminal conviction. In practice, it is likely to occur where HSE Act breaches involve serious harm or persistent and/or wilful non-compliance. Currently, approximately 50% of prosecutions are for an offence involving serious harm (another 25% involve harm that does not constitute 'serious harm'). Prosecution is also expensive in terms of time and resources for all parties.
- 16 A gap exists where there are no effective enforcement tools to correct situations in which a risk exists but does not warrant pursuing a prosecution. An additional mechanism is needed to allow for a more effective range of graduated responses to a breach of the HSE Act.

Infringement offence notices

- 17 It is proposed that the HSE Act be amended to add an Infringement Offence Notice (ION) system to the enforcement tools available to HSE inspectors. This would allow HSE inspectors to issue an ION requesting payment of a financial penalty (rather than prosecuting) where lesser enforcement tools have been ineffective in achieving compliance.
- 18 IONs would be a useful tool in encouraging compliance, particularly for those who regularly allow risk of harm in their workplace but, under the current system, are likely to escape prosecution. The immediacy of the penalty assessment to the actual breach is more likely to act as a spur to a previously non-compliant party to make them aware of, and compliant with, their obligations under the HSE Act. Similar regimes have been reported as having a 'ripple effect', in that their application in one workplace can spread quickly by word of mouth to other workplaces and industries. Because they would not result in a criminal conviction, IONs would not stigmatise minor offenders.
- 19 IONs are less costly to implement in terms of money, time and resources when compared with full prosecution. This cost saving extends to the process itself, because notifications of penalty and plea can be done by mail.

IONs proposed for full range of offences

- 20 The performance-based nature of the HSE Act makes it difficult and unwise to take a selective approach and restrict IONs to only some HSE Act offences. The Act does not prescribe a list of specific requirements to make a workplace safe. Instead, the Act sets out health and safety duties and obligations that relate primarily to taking 'all practicable steps' to manage workplace hazards. The majority of HSE Act prosecutions are for breach of the Act's general duties provisions (eg, in section 6 an employer's duty to ensure the safety of their employees).
- 21 The HSE regulations do prescribe offences based on particular risks for particular industries (eg, working under raised objects; working in underground mines), but restricting IONs to these specialised situations would give inadequate coverage.
- 22 A selective approach would also limit the effectiveness of OSH and potentially frustrate employers, because situations of equal seriousness may be treated differently, depending on whether they fell within the ION scheme or not.
- 23 Therefore, IONs will best support the intent of the Act if they are available for the full range of offences under the HSE Act and regulations.

Threshold: prior warning and failure to act

- 24 IONs will be available only where the person received some kind of prior warning of their non-compliance with the HSE Act or regulations and has failed to act. This will be established where:
 - an Improvement Notice or Prohibition Notice has been issued by a HSE inspector, and the person has not complied with it; or

- a Hazard Notice identifying a hazard has been issued by an elected and trained employee representative (see accompanying Cabinet paper ‘Change to the Health and Safety in Employment Act: Employee Participation’), the person has not responded to it, and the HSE Inspector determines that there is still a breach; or
- the person has a record of one or more previous warnings, Improvement Notices, Prohibition Notices, Infringement Offence Notices or prosecutions for the same or similar breach(es) as their current breach.

Threshold: clear and obvious breach

- 25 As well, IONs will only be used where the nature and the facts of the breach are clear-cut. The inspector must be able to identify the exact nature of the offence and the offender/s.
- 26 Before issuing the ION, the inspector must ensure that sufficient evidence is available to enable the offence to be proven beyond reasonable doubt, should the matter be contested in a District Court.

Limitation period for IONs

- 27 Under the HSE Act, if an offence is to be prosecuted, a charge must be laid within six months of the incident. This period of time is unnecessarily long for issuing an ION, given their more immediate and clear-cut nature. It is proposed that the limitation period for issuing an ION should be within two weeks of the incident that constitutes the breach.
- 28 If, for some reason, an HSE inspector is not able to issue an ION within two weeks:
- if the breach continues, it could be considered as a ‘new’ ION; or
 - a full prosecution would still be an option, with the usual six-month limitation period.

IONs and full prosecution

- 29 Full prosecution would continue to be available in all situations, but would tend to be reserved for offences involving more serious injuries or death and/or persistent non-compliance. The seriousness of the individual circumstances will determine whether an ION or full prosecution is the most appropriate response in a particular case.
- 30 IONs would be available where no harm has occurred, as well as where a person has been harmed, including ‘serious harm’ as defined in the HSE Act. IONs would also be available for failing to have a system for identifying hazards, as required by section 7 of the HSE Act.
- 31 A person would not be liable to full prosecution for the same breach (ie, involving the same set of facts on the same date) for which they were issued an ION. However, if the person repeats their breach, they could be liable for another ION or prosecution. If a person is prosecuted successfully, information about their previous Improvement Notices, Prohibition Notices and IONs for the same or similar breach(es) can be presented to the Court when it considers an appropriate fine.

ION penalties – individual or body corporate

- 32 A question arises about how to deal with the range of different persons with obligations under the HSE Act. Such persons include those in control of places of work, principals, contractors, and self-employed persons. To address this, it is proposed that ION penalties should be differentiated between those for an individual (eg, an employee; a self-employed person) and those for a body corporate. This approach is similar to that for penalties under the Employment Relations Act 2000.

ION penalties – amounts

- 33 While IONs are not intended to unduly stigmatise or penalise minor offenders, they need to be of a sufficient level to encourage future compliance and send a message to other workplaces. The level of possible penalty should also be meaningful having regard to:
- the intent of IONs (a quickly and easily administered enforcement mechanism for HSE Act breaches that do not warrant full prosecution);
 - the nature of the offence (eg, whether anyone could have been harmed; whether, and to what extent, anyone was harmed; whether the breach involved a particular hazard not being addressed or the lack of a method of systematically identifying hazards); and
 - the proposed prosecution fine levels. The accompanying Cabinet paper, ‘Changes to the Health and Safety in Employment Act: Enforcement Proposals’, recommends increasing the maximum fine to \$500,000 in prosecutions for breaches of the HSE Act.
- 34 Two options have been identified for determining the penalty level.

Option 1: Harm resulting from breach

- 35 Under this option, ION penalty levels would be based on the degree of harm that actually resulted from the breach of the HSE legislation. Penalty levels would be as set out below:

	Individual	Body corporate
No harm	\$100	\$500
Harm	\$300	\$1,500
Serious harm¹	\$600	\$3,000
Failure to have a method of systematically identifying hazards²	\$800	\$4,000

- 36 This option provides certainty for persons subject to IONs and administrative ease for HSE inspectors who issue IONs, because the basis for the penalty assessment is obvious and transparent. Unlike Option 2, it does not require the HSE inspector to make any assessment of potential for harm. This option also increases the likelihood of consistent application of IONs generally.

Option 2: Harm resulting or likely to have resulted from breach

- 37 Under this option, ION penalty levels would be based on the degree of harm that actually resulted *or was likely to have resulted* from the breach of the HSE legislation. The penalty category of “no harm” would be applied only in those few cases where a person could not be harmed by the breach, because it did not involve a hazard or hazard management (eg, failure to maintain an accident register as required by section 25 of the HSE Act). Penalty levels would be the same as those set out in paragraph 35.
- 38 Under this approach the ION penalty reflects the nature of the offence, because it recognises the seriousness of the likely, as well as actual, consequences of a breach. This option also emphasises the importance of prevention of harm in the management of workplace health and safety, consistent with the overall philosophy of the HSE Act. The HSE inspector’s assessment of the likelihood of harm is comparable to the determination they must about the likelihood of serious harm when deciding whether to issue Prohibition Notices.

How IONs will operate

- 39 The Infringement Offence Notice will need to specify:
- the offence;

¹ as defined in the HSE Act.

² as required by section 7(1) of the HSE Act.

- the applicable section of the Act or regulation;
- the grounds on which the ION is based;
- the penalty amount; and
- the rights of the person to whom the ION is issued (including right to a Court hearing).

40 The notices will comply with section 21 of the Summary Proceedings Act 1957.

41 It is important to ensure that HSE inspectors have sufficient ability to obtain the full details of a person to whom an ION may be issued. The HSE Act's present powers of entry, inspection and requiring information should be amended to include powers to obtain the full name, date of birth, status (employer, employee, self-employed person, principal, subcontractor) and current mailing and residential address of any person to whom they propose to issue an ION. This is to ensure that the person can be correctly identified and mailed or delivered the associated correspondence.

42 It is also proposed that all IONs penalties be paid into the Crown Bank Account, rather than to OSH. This will eliminate the suggestion that the system is designed as a revenue gathering exercise for OSH. This is also consistent with the treatment of fines resulting from full HSE prosecutions, as well as with the prosecution system generally.

Process for responding to IONs

43 It is proposed that the ION give the person notified 28 days to either pay the penalty or request a Court hearing on the offence. If payment of the penalty is made within this time, no further action will be taken on the ION (any continuing breach or further offending will be addressed by further IONs or prosecution). Also, the person would be able to write to OSH explaining why the ION should not proceed, and OSH would be able to waive an ION penalty in appropriate circumstances.

44 Where payment is not made, nor correspondence received nor a request made for a Court hearing, a reminder notice would be posted. The reminder would give the alleged offender another 28 days to either make payment or request a Court hearing. If there is no response, the ION would be lodged at the Department for Courts to be enforced under the provisions of the Summary Proceedings Act 1957. This 'two-step' approach is the standard process for infringement offences in other areas (eg, minor traffic offences).

45 Where a Court hearing is requested, OSH would be required to prove the particular offence beyond a reasonable doubt, to the same extent as if the offence had been prosecuted.

46 If a person is unsuccessful in defending an ION through a Court hearing, this will not result in a higher penalty amount than was stated in the ION (but will incur court costs). An ION, whether or not defended through a Court hearing, will not result in a criminal conviction.

Operational issues

47 The statutory requirements relating to IONs will need to be supported by appropriate operational policy and comprehensive and ongoing training. Particular issues to address are:

- establishment of clear operational policies and protocols for IONs;
- initial and ongoing training of HSE inspectors (which will be required before an HSE inspector will be warranted to issue IONs);
- publicity to ensure that IONs and the HSE Act's obligations generally are well understood; and
- IONs penalties processing (by OSH for IONs penalty payments within the first 56 days following issuance of the ION, and by the Department for Courts for the filing of unpaid IONs for enforcement).

- 48 To ensure that employers are fully aware of the application of IONs, and to allow time to put the necessary regulations and administrative procedures in place, this proposal would not become effective until July 2003. A pilot implementation would precede full implementation, subject to resource availability.

Consultation

- 49 ACC, Departments of the Prime Minister and Cabinet and Courts, Ministries of Agriculture and Forestry, Economic Development, Environment, Health, Justice, and Transport, the Police, the Treasury, and Te Puni Kōkiri were consulted on this paper. The Ministry of Women's Affairs declined the opportunity to comment on this paper.

Department of Labour comment

- 50 Option 2, by introducing a subjective element into an HSE inspector's assessment of an ION penalty, will result in:

- less certainty for persons subject to IONs;
- a greater possibility of inconsistency in operation of the ION system;
- an increased potential for enforcement error;
- increased administration for HSE inspectors responsible for issuing IONs, due to the evidence required to support their assessment regarding the likelihood of harm (with resulting impacts on the speed, and number, of IONs issued); and
- a risk of increased legal challenges, with resulting impacts on the criminal court system (eg, possible increased delays in hearing cases).

- 51 The increased potential for enforcement error, combined with the greater likelihood of legal challenge, could result in HSE inspectors expending greater administrative resources for less effect (eg, weakened compliance signals from unsuccessful enforcement).

Justice comment

- 52 "The Ministry of Justice has raised concerns about the proposed 2-week period after which an infringement notice may not be issued although a "full" prosecution may then be initiated. Under the proposal such prosecutions could be initiated in circumstances where the enforcement agency would otherwise utilise the offence notice system but for its failure to issue a notice within the 2-week period. A defendant will then be liable to a greater penalty, by virtue of the contravention being dealt with by a "full" prosecution, not necessarily because of the nature or gravity of the offending, but solely because the infringement notice procedure has not been initiated within the 2-week period. This is contrary to the accepted principle in criminal law that like offenders should, so far as possible, be dealt with in like manner."

Financial implications

- 53 At a bilateral meeting on Monday 9 July 2001, the Acting Minister of Finance and I agreed, due to pressure on the 2001/02 contingency fund, that:

- the Health and Safety in Employment Amendment Act timeline will be delayed, with the Amendment Act being passed in April 2002, and coming into force in September 2002;
- any costs associated with the HSE Amendment Act that are incurred in the 2001/2002 financial year, will be funded from within the Vote Labour existing baseline through reprioritisation; and
- funding for costs associated with the implementation of the HSE Amendment Act will be considered as part of the 2002 Budget round.

54 The accompanying Overview paper outlines the effects of this approach, and describes the fixed costs for implementing any one of the proposed changes to the Health and Safety in Employment Act. The specific costs associated with the proposals in this paper are:

- operational policy development;
- initial and ongoing training for HSE inspectors;
- 1.25 additional inspectors due to increased enforcement activity related to IONs; and
- set up and ongoing costs for IONs processing, including processing of IONs penalty payments by OSH and of unpaid IONs by the Department for Courts.

Financial implications of Option 1 (Penalty based on harm resulting from breach)

55 The following table summarises the estimated costs of the Infringement Offence Notice proposals for Option 1. Note that Crown Revenue received offsets the impact of the appropriations on the Government's operating provisions:

	2001/02 (\$m)	2002/03 (\$m)	2003/04 (\$m)	2003/04 (\$m)	Outyears (\$m)
<i>Vote Labour</i>					
Operating costs (GST incl)	0.072	0.524	0.234	0.237	0.237
Outside the provisions (GST incl)	-	0.002	-	-	-
Capital costs (GST n/a)	-	0.028	-	-	-
Crown revenue (GST n/a)	-	-	(0.247)	(0.247)	(0.247)
<i>Vote Courts</i>					
Operating expenditure (GST incl)	-	-	0.018	0.018	0.018
Operating revenue (GST incl)	-	-	(0.024)	(0.024)	(0.024)
Net Crown Revenue (GST n/a)	-	-	(0.240)	(0.240)	(0.240)

Financial implications of Option 2 (Harm resulting or likely to have resulted from breach)

56 The following table summarises the estimated costs of the Infringement Offence Notice proposals, based on Option 2.

	2001/02 (\$m)	2002/03 (\$m)	2003/04 (\$m)	2003/04 (\$m)	Outyears (\$m)
<i>Vote Labour</i>					
Operating costs (GST incl)	0.072	0.524	0.234	0.237	0.237
Outside the provisions (GST incl)	-	0.002	-	-	-
Capital costs (GST n/a)	-	0.028	-	-	-
Crown revenue (GST n/a)	-	-	(0.231)	(0.231)	(0.231)
<i>Vote Courts</i>					
Operating expenditure (GST incl)	-	-	0.021	0.021	0.021
Operating revenue (GST incl)	-	-	(0.028)	(0.028)	(0.028)
Net Crown Revenue (GST n/a)	-	-	(0.350)	(0.350)	(0.350)

57 Crown revenue anticipated from the establishment of IONs is higher under Option 2 than Option 1. This increase is due to the very low number of IONs expected to be assessed as likely to result in "No Harm" (as discussed in paragraph 37) and more IONs assessed as likely to result in harm or serious harm.

Human rights

58 The proposals are intended to comply with the Human Rights Act 1993.

Legislative implications

59 The HSE Act will require amendments to set out the requirements for IONs, as discussed above.

Regulatory impact and compliance cost statement

60 A Regulatory Impact and Compliance Cost Statement is attached to this paper.

Publicity

61 The communications strategy is described in the accompanying overview paper.

Recommendations

62 It is recommended that the Cabinet Finance, Infrastructure and Environment Committee:

Policy

1. **agree** that the HSE Act be amended to introduce an Infringement Offence Notice (IONs) system, to complement the range of enforcement tools currently available under the Act and allow for a more complete range of graduated responses to a breach of the Act, which will:
 - 1.1 allow HSE inspectors to issue an ION (rather than having to seek a full prosecution);
 - 1.2 be available for the full range of offences under the HSE legislation where
 - 1.2.1 the person effectively received prior warning of their non-compliance with the HSE Act or regulations in one of the following ways:
 - 1.2.1.1 an Improvement Notice or Prohibition Notice has been issued by a HSE inspector, and the person has not complied with it, or
 - 1.2.1.2 a Hazard Notice identifying a hazard has been issued by an elected and trained employee representative (see accompanying Cabinet paper 'Change to the Health and Safety in Employment Act: Employee Participation'), the person has not responded to it, and the HSE inspector determines that there is still a breach, or
 - 1.2.1.3 the person has a record of one or more previous warnings, Improvement Notices, Prohibition Notices, Infringement Offence Notices or prosecutions for the same or similar breach(es) as their current breach, and
 - 1.2.2 the breach of the HSE Act or regulations is clear and obvious;
 - 1.3 request payment of a financial penalty for the breach;
2. **agree** that the limitation period for issuing an ION will be within 2 weeks of the incident;
3. **agree** that, to ensure penalty levels are appropriate for the range of persons with obligations under the HSE Act (employers, employees, persons with control of places of work, principals, contractors, self-employed persons), the breakdown of penalties should be on the basis of whether a person is an individual or a body corporate;
4. **EITHER** (Option 1):
 - 4.1 **agree** that ION penalty levels will be based on the degree of harm that actually results from a breach of the HSE legislation;

OR (Option 2)

 - 4.2 **agree** that ION penalty levels will be based on the degree of harm that actually resulted *or was likely to have resulted* from the breach of the HSE legislation;

5. **agree** that the IONs penalty amounts be as follows:

	Individual	Body corporate
No harm	\$100	\$500
Harm	\$300	\$1,500
Serious harm (as defined in the HSE Act)	\$600	\$3,000
Failure to have a method of systematically identifying hazards (as required by section 7(1) of the HSE Act)	\$800	\$4,000

6. **agree** that HSE inspectors' current powers under the HSE Act to require information be amended to include powers to obtain the full name, date of birth, status (employer, employee, self-employed person, principal, subcontractor) and current mailing and residential address of any person to whom they are issuing an ION, to ensure that they can be correctly identified and mailed or delivered the associated correspondence;
7. **agree** that all IONs penalties be paid into the Crown Bank Account;
8. **agree** that the process for responding to an ION will be as follows:
- 8.1 the person notified has 28 days within which to pay the penalty, write explaining why the ION should be withdrawn, or request a Court hearing on the offence;
- 8.2 where payment is not made, nor correspondence received nor a request made for a Court hearing in 28 days, a reminder notice will be posted giving the alleged offender another 28 days either to make payment or to request a Court hearing;
- 8.3 where payment is not made, nor a request made for a Court hearing in that second 28 day period, the ION would be lodged at the Department for Courts to be enforced under the provisions of the Summary Proceedings Act 1957;
9. **agree** that when a person is unsuccessful in defending an ION through a Court hearing, it will not result in a higher penalty amount than was stated in the ION (but will incur court costs);
10. **note** that an ION, whether or not defended through a Court hearing, will not result in a criminal conviction;
11. **note** that to ensure employers are fully aware of the application of IONs, and to allow time to put the necessary regulations and administrative procedures in place, this proposal would not become effective until July 2003;

Financial implications

12. **note** that the fixed costs for implementing any one of the proposed changes to the Health and Safety in Employment Act are:

Fixed costs if any change occurs	2001/02	2002/03	2003/04	2004/05	Outyears
	\$m	\$m	\$m	\$m	\$m
Operating costs (GST incl)	0.247	1.866	0.294	0.243	0.084
Outside the provisions	-	0.051	-	-	-
Capital costs (GST n/a)	-	0.562	-	-	-

13. **note** that the estimated additional cost of the infringement offence notice proposal is as follows:
- 13.1 if Ministers agree to Option 1 in recommendation 4.1

	2001/02 (\$m)	2002/03 (\$m)	2003/04 (\$m)	2003/04 (\$m)	Outyears (\$m)
<i>Vote Labour</i>					
Operating costs (GST incl)	0.072	0.524	0.234	0.237	0.237
Outside the provisions (GST incl)	-	0.002	-	-	-
Capital costs (GST n/a)	-	0.028	-	-	-
Crown revenue (GST n/a)	-	-	(0.247)	(0.247)	(0.247)
<i>Vote Courts</i>					
Operating expenditure (GST incl)	-	-	0.018	0.018	0.018
Net Crown Revenue (GST n/a)	-	-	(0.240)	(0.240)	(0.240)

13.2 if Ministers agree to Option 2 in recommendation 4.2

	2001/02 (\$m)	2002/03 (\$m)	2003/04 (\$m)	2003/04 (\$m)	Outyears (\$m)
<i>Vote Labour</i>					
Operating costs (GST incl)	0.072	0.524	0.234	0.237	0.237
Outside the provisions (GST incl)	-	0.002	-	-	-
Capital costs (GST n/a)	-	0.028	-	-	-
Crown revenue (GST n/a)	-	-	(0.231)	(0.231)	(0.231)
<i>Vote Courts</i>					
Operating expenditure (GST incl)	-	-	0.021	0.021	0.021
Net Crown Revenue (GST n/a)	-	-	(0.350)	(0.350)	(0.350)

14. **note** that any costs associated with the HSE Act amendments that are incurred in the 2001/02 financial year, will be funded within the Department of Labour baseline through absorption or reprioritisation;
15. **note** that this approach carries a number of risks and will therefore will be closely monitored by the Department of Labour , with progress reported to Ministers on a regular basis;
16. **note** that funding of the remainder of the HSE Act amendments costs will be considered as part of the 2002/03 Budget round;

Drafting instructions

17. **invite** the Minister of Labour to prepare drafting instructions for Parliamentary Counsel Office to amend the HSE Act as set out in recommendations 1 to 10, above.

Minister of Labour
Hon Margaret Wilson

Regulatory Impact and Compliance Cost Statement

Statement of the nature and magnitude of the problem and the need for government action

- 1 The Health and Safety in Employment Act 1992 (HSE Act) currently provides Health and Safety inspectors (HSE inspectors) with a range of enforcement tools. However, a financial penalty for non-compliance can only be imposed following a successful prosecution. Prosecution is a severe means of ensuring compliance, resulting in a criminal conviction. In practice, it is likely to occur where breaches of the HSE Act involve serious harm or persistent and/or wilful non-compliance with the Act. Prosecution is also expensive in terms of time and resources for all parties.
- 2 A gap exists where there are no effective enforcement tools to correct situations in which a risk exists but does not warrant the time and expense of pursuing a prosecution. An additional mechanism is needed to allow for a more effective range of graduated responses to a breach of the Act.

Statement of the public policy objective(s)

- 3 One of the main objectives of the Government's HSE Act Review is to improve the Act's effectiveness. One of the categories of proposals that was considered in this Review is effective enforcement to provide for greater incentives for compliance. One aspect of effective enforcement is to ensure compliance for those breaches of the Act that create risk but do not warrant pursuing a prosecution.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)

Three options were considered:

- 4 Infringement offences as proposed in the public document 'Discussion Paper on the Review of the Health and Safety in Employment Act' (HSE Review), released in December 2000. The proposal included the following elements:
 - a limited number of minor offences only (where clear hazard but no harm has occurred);
 - a maximum infringement fine NZ\$1,000;
 - application to employers and employees;
 - payment of fines into Crown account; and
 - opportunity to request Court hearing.
- 5 An administrative penalty system comparable to British Columbia's occupational health and safety scheme, which includes:
 - a wide range of offences that are the same offences as those for which prosecution could be an option;
 - a maximum administrative penalty NZ\$750,000;
 - application to employers only;
 - a variable penalty that can be adjusted \pm 30 percent based on a number of specified factors such as employer size, nature of offence, employer history, etc;
 - penalty paid into compensation fund; and
 - opportunity for appeal to independent administrative tribunal.

6 Preferred option – an expanded version of the infringement offences proposed in the HSE Review, incorporating some aspects of the British Columbia system. The proposal included the following elements:

- available for the full range of offences under the HSE Act and regulations where
 - effectively the person’s knowledge that they are in breach of the HSE Act or regulations is established by
 - i. an Improvement Notice or Prohibition Notice issued by a HSE inspector, with which the person has not complied, or
 - ii. a Hazard Notice issued by an elected and trained employee representative, to which the person has not responded, and the HSE inspector agrees that there is a breach, or
 - iii. a record of one or more previous warnings, Improvement Notices, Prohibition Notices, Offence Notices or prosecutions for the same or similar breach(es); and
 - the breach of the HSE Act or regulations is clear and obvious.
- maximum penalties

	Individual	Body Corporate
No Harm	\$100	\$500
Harm	\$300	\$1,500
Serious harm³	\$600	\$3,000
Failure to have a method of systematically identifying hazards⁴	\$800	\$4,000

- applies to employers and employees
- penalty paid into Crown account
- opportunity to request Court hearing

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Benefits

- do not unduly stigmatise minor offenders;
- encourage compliance, particularly among those parties who would otherwise escape prosecution but who still allow risk of harm to occur on a regular basis in their workplace;
- healthier and safer workplaces for employees and others in the workplace;
- reduced costs to some employers and employees, who might otherwise be prosecuted (currently approximately 50% of prosecutions involve no harm or harm that is less than ‘serious harm’). These reduced costs are due to:
 - a clear breach being established at the start of the process;
 - no attendant legal fees;
 - no loss of time in preparing a defence for Court; and
 - more certainty regarding the prescribed penalty.

³ as defined in the HSE Act.

⁴ as required by section 7(1) of the HSE Act.

Costs

- a greater range of employers and employees potentially subject to enforcement action resulting in a financial penalty than has previously been the case (when only successful prosecution has resulted in a financial penalty);
- increased administrative costs for those employers and employees whose breaches did not warrant pursuing a prosecution and therefore might not have faced enforcement action previously; and
- increased compliance costs for those employers and employees who may not have been complying or fully complying with the HSE Act to date.

Statement of consultation undertaken

- 7 Public submissions have been made on the HSE Review policy proposals resulting in this Cabinet paper. In addition, key national organisations, sector organisations and companies have been consulted on the development of policy resulting in this Cabinet paper.
- 8 ACC, Departments of the Prime Minister and Cabinet and Courts, Ministries of Agriculture and Forestry (Rural Affairs division), Economic Development, Environment, Health, Justice, and Transport, the Police, the Treasury, and Te Puni Kōkiri were consulted on this paper. The Ministry of Women's Affairs declined the opportunity to comment on this paper.

Business compliance cost statement

- 9 As indicated above, a greater range of employers potentially will be subject to enforcement action resulting in a monetary penalty. For such employers, attendant on this will be increased administrative costs, as well as increased compliance costs where those employers have not been complying or fully complying with the HSE Act to date.
- 10 However, the costs of compliance are largely those associated with the costs of the HSE Act already. Other steps are already being taken to reduce these existing compliance costs (e.g., codes of practice).
- 11 Consultation on the HSE Review infringement notice proposal also indicated the following concerns associated with compliance costs:
 - consistency of infringement notices for specific offences with the performance-based HSE Act;
 - clear, enforceable standards to provide certainty about when an infringement notice might be issued; and
 - consistency in the administration of infringement notices.
- 12 The details of the preferred option were developed in response to these concerns.
- 13 Further detail of these compliance costs cannot be identified until further work is undertaken on how the proposal will be implemented.
- 14 As noted in the paper, the statutory requirements relating to IONs will be supported by appropriate operational policy and ongoing training. There will need to be clear operational policy and protocols established to cover the use of the various enforcement tools, the interface between them and how their strategic operation will best improve health and safety across all workplaces. This work will include consideration of how compliance costs can be minimised.