

## **Regulatory Impact Statement – Unilateral cancellation of voluntary time payment arrangements for unpaid fines**

### ***Agency Disclosure Statement***

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice (the Ministry).

It provides an analysis of a legislative proposal to remove the 10 day notice period before a court registrar can unilaterally cancel a voluntary ‘time payment arrangement’ for the payment of fines<sup>1</sup> in three circumstances.

A small but apparently growing number of people are using this notice period to delay or avoid paying their fines. Only anecdotal information is available on the number of people who have done this. The Ministry estimates there are less than 100 such cases each year.

A RIS is required because the alternatives to the status quo would require Cabinet approvals and legislative amendment to the provisions governing the unilateral cancellation of voluntary arrangements.

Nora Burghart  
**Policy Manager**  
**Courts and Tribunals Policy**  
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<sup>1</sup> For brevity, the term, ‘fines’ has been used to refer to all monetary penalties collected by the courts. It includes reparation that is owed to victims, offender levies that fund services for victims, and unpaid infringements such as speeding tickets.

## ***Executive summary***

1. Enforcement action can be taken 28 days after imposition if fines have neither been fully paid nor included in a voluntary 'time payment arrangement'. Enforcement action includes the seizure and sale of property and mandatory deductions from wages or bank accounts.
2. Voluntary 'time payment arrangements' enable people who cannot afford to pay their fines within 28 days to avoid enforcement action. This process relies heavily on people's honesty. A prompt and effective response is needed when it is discovered that a person has not been honest.
3. The statutory requirement to give 10-days notice before a voluntary arrangement is unilaterally cancelled prevents a prompt response. A small but apparently growing number of people are using this period to delay or evade resolution of their fines. This undermines the credibility of fines as penalties.
4. A legislative amendment is proposed to enable voluntary time payment arrangements to be unilaterally cancelled and immediate enforcement action to be taken when a registrar has genuine and reasonable grounds to believe:
  - false or misleading financial information was provided by the person when the time payment arrangement was entered into;
  - the person's financial position has improved significantly since the arrangement was entered into;
  - a person who meets the monetary criteria for interception at an airport will be leaving New Zealand within the next 10 days for an extended period or permanently and the penalties cannot be resolved in any other way in the time available.
5. The aim of the first two grounds is to secure prompt payment of fines from people who can afford to pay without incurring undue hardship.
6. The aim of the third ground is to ensure that people cannot leave New Zealand for an extended period or permanently without resolving their fines. Fines can be resolved through payment (including at the airport prior to departure), the completion of an alternative sentence imposed by a judge or the suspension of enforcement action or remittal by a judge.
7. The voluntary arrangement will be reinstated on the same terms if the information the court acted on is subsequently found to be inaccurate.

## ***Status quo***

### ***Entering into voluntary time payment arrangements***

8. The Summary Proceedings Act 1957 authorises court registrars and bailiffs to enter into voluntary agreements with people who cannot afford to pay their fines in full within 28 days. This enables fines to be paid in affordable instalments over a longer period of time. As at 31 July 2015, around 470,000 people and organisations owed fines totalling around \$578 million, of which over half is either

not overdue or is being paid through a time payment arrangement. (Most fines are paid through time payment arrangements.)

9. Voluntary time payment arrangements can be entered into *only* if people cannot afford to pay their fines in full without incurring undue hardship. Before entering into an arrangement, a registrar or a bailiff has to collect sufficient financial information to satisfy them that a time payment arrangement is the most appropriate way to pay the fines. For example, people are asked if they own any vehicles or other assets and if they have any savings. People are also asked if they are planning overseas travel because fines can only be enforced in New Zealand and because the ability to afford overseas travel can indicate an ability to pay without incurring undue hardship. Generally, the longer the time period or the greater the amount involved, the more financial information a registrar or a bailiff will require before entering into a voluntary arrangement.
10. Around 225,000 voluntary arrangements are entered into each year. These can be for periods of up to five years but most are for shorter periods. Many arrangements are cancelled before the fines are fully paid.<sup>2</sup> The reason for cancellation is not recorded. However, the most common reason is the person ceasing to make payments. If payments do not resume within a reasonable period, the person is deemed to have defaulted on the time payment arrangement. This automatically cancels the arrangement and enables enforcement action to be taken.

#### *Unilateral cancellation of voluntary time payment arrangements*

11. A registrar or bailiff can unilaterally cancel a voluntary arrangement that the person is complying with only if:
  - false or misleading financial information was provided when the arrangement was entered into;
  - the person's financial position has changed significantly since the arrangement was entered into;
  - a further fine has become overdue.
12. The registrar or bailiff is required to contact the person and to allow 10 days for verbal or written submissions to be made on the proposal to cancel the arrangement.<sup>3</sup> They are also required to explain their reasons for proposing the change. This provides an opportunity for people to correct inaccurate information the court may have received from a third party or to discuss other options for resolving their fines. If a submission is made, the registrar or bailiff is required to consider it before deciding whether or not to cancel the arrangement. If the registrar cancels the arrangement anyway or approves a bailiff's decision to cancel the arrangement, the person can ask a judge to review the registrar's cancellation decision. The judge can confirm, change or cancel the decision. Otherwise, the

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<sup>2</sup> Around 194,700 arrangements were cancelled in 2012, 184,300 were cancelled in 2013 and 170,600 were cancelled in 2014. As arrangements can be for long periods, there is no direct correlation between the number of arrangements entered into each year and the number that are cancelled each year.

<sup>3</sup> Registrars can cancel mandatory time payment arrangements such as mandatory deductions from wages, benefits or bank accounts without notice.

cancellation takes effect following consideration of any submissions, on a specified date or after 10 days. Very few submissions are received.

### *Fines enforcement options*

13. The statutory criteria for all enforcement actions, including interceptions at an airport, exclude fines that are subject to a voluntary arrangement.
14. Once a voluntary arrangement has been cancelled, fines can be enforced through the seizure and sale of property and mandatory deductions from wages, benefits or bank accounts to pay fines. The person can also be summoned to appear before a registrar or a judge to determine the most appropriate means of resolving their fines. If the person cannot be located, a registrar can issue a warrant to arrest.

### *Interception at airports*

15. People who owe court imposed fines of at least \$5,000 or any amount of reparation, and who are also subject to a warrant to arrest, can be intercepted and potentially arrested at an international airport to prevent them from leaving New Zealand either for a holiday or permanently before they have resolved their fines. Court imposed fines are fines imposed by a court for serious offending. Infringements, offender levies and other similar monetary penalties are excluded.
16. The details of all eligible people are automatically loaded onto the Customs computer system every weekday. Around 4,300 people are eligible for interception each day. Approximately 100 new people become eligible each month and a similar number cease to be eligible each month because their fines have been resolved.
17. When an eligible person has their passport scanned by Customs at an international airport, an electronic alert is triggered that notifies the Police at the airport. After the Police intercept the person, the Ministry is phoned using a dedicated line to confirm that the arrest warrant is still valid and the amount of fines owed. Payment is then requested. If the person pays, they can continue with their travel. Most people pay at this point.
18. If the person cannot pay, the Police can either allow them to travel or can arrest them and bail them to appear in court at the next available day. Their passport is usually withheld as a bail condition. A District Court Judge determines the most appropriate means of resolving their fines. This can include replacing the fines with a community work sentence, remitting the fines, suspending enforcement action or taking enforcement action.
19. The Police will usually allow people who can prove they will be returning to New Zealand shortly and who cannot afford to pay their fines to continue with their travel. These people are intercepted at the airport when they return. If they are still unable to pay their fines, they are arrested and are brought before a judge.
20. Around three percent of eligible people are intercepted at an airport each year. During 2014, 131 people were intercepted, 107 on departure and 48 on arrival. The number of interceptions per month ranged from two in April 2014 to 20 in September 2014, with an average of 11 interceptions per month. Reparation totalling \$40,500 and fines totalling \$8,000 were collected. Fines totalling \$57,000

were replaced with another sentence or remitted by a judge following an interception.

### ***Problem definition***

21. A small but apparently growing number of people (estimated at less than 100 each year) use the 10 day notice requirement to:
  - delay payment by hiding or disposing of undeclared or subsequently obtained money or property;
  - delay or avoid their fines by entering a voluntary arrangement they have no intention of complying with so that they can leave New Zealand without the risk of being stopped at the airport.
22. Enforcement action cannot be taken while a voluntary arrangement is in place.
23. Voluntary arrangements rely on people's honesty. The inability to take prompt action when dishonesty is discovered or the person's financial situation improves significantly undermines the credibility of fines as penalties. This impact is heightened when a victim advises the court of the person's dishonesty and the person is able to use the 10 day notice period to continue to delay or avoid paying the reparation.
24. While removing the 10 day notice period precludes the person being given time to correct inaccurate information that the cancellation is based upon, it is considered necessary to allow immediate enforcement action to be taken to ensure that people:
  - who can afford to pay their fines without incurring undue hardship do so as promptly as possible;
  - cannot delay or avoid the resolution of their fines or reparation by leaving New Zealand for an extended period or permanently. Allowing people to leave New Zealand without resolving fines or reparation undermines the credibility of the justice system. Fines and reparation can only be enforced in New Zealand. Fines can be resolved through payment, the completion of an alternative sentence imposed by a judge, the suspension of enforcement action or remittal by a judge.
25. While the amount owed by these people is not likely to be significant, publicity about these cases contributes to the widespread public perception that court fines are not usually collected. For example, the Public Perceptions of Crime and the Criminal Justice System Survey 2014<sup>4</sup> found that only 28% of respondents believed that court fines are usually collected. Only 12% agreed that reparation is usually collected and paid to victims of crime. This perception erodes the incentives for others to pay their fines and reparation and undermines the credibility of fines and reparation as a sanction for illegal activities.

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<sup>4</sup> This is a nationwide, face to face survey of New Zealand residents aged 15 years and over. Nearly 7,000 interviews took place between February and June 2014.

## ***Objectives***

26. The legislative proposal was assessed against the following objectives:

- to maintain credibility of fines as a sanction by enabling prompt and effective action to be taken when the trust inherent in voluntary arrangements has been abused;
- achieving an appropriate balance between the prompt collection of fines, and procedural fairness for people who owe fines.

## ***Options and impact analysis***

### *Preferred Option*

27. Registrars will be authorised to unilaterally and immediately cancel voluntary time payment arrangements when they have 'genuine and reasonable grounds' to believe that one of the following three situations has occurred:

- the person provided false or misleading financial information when the arrangement was entered into;
- the person's financial position has improved significantly since the arrangement was entered into;
- a person who meets the monetary criteria for interception at an airport is leaving New Zealand within the next 10 days for an extended period or permanently and the penalties cannot be resolved in any other way in the time available.

28. People with voluntary arrangements will have to agree to tell the court if their financial situation improves significantly or if they decide to leave New Zealand for an extended period (that is, for more than a few weeks holiday) before the fines are paid. People will be warned that if they fail to do so, or if the court discovers they have been dishonest, the court could unilaterally cancel their arrangement and take enforcement action to recover the fines. This information will also be included in documents such as the Notice of Fine. This will increase the likelihood of people proactively contacting the court.

29. The threshold of 'genuine and reasonable grounds' will require registrars to have objective evidence that one of these three situations has occurred. For example:

- victims, friends or family of the person have provided credible information of undeclared savings and assets, or that the person has entered into a voluntary arrangement in order to be able to leave New Zealand for an extended period or permanently without being arrested at the airport;<sup>5</sup>
- a bailiff discovers through their field work that the person has not declared property that could be seized and sold to pay their fines;

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<sup>5</sup> If the alleged overseas travel is more than 10 days away, the current statutory procedures will continue to apply. The court can unilaterally cancel the arrangement 10 days after the date the court informed the person that the arrangement was to be cancelled, provided the registrar has considered any submissions the person has made.

- the Police advise the court they have seized a large amount of cash from a person who owes fines. At present, the cash often has to be returned to the person before the arrangement can be cancelled and a warrant to seize property issued so that the cash can be seized by the court and applied to the fines.
30. The existence of a voluntary arrangement means that contact has been made with the person and that enforcement action will be taken against the correct person.
  31. Registrars will have discretion as to whether or not to cancel an arrangement. For example, an arrangement would be unlikely to be cancelled if the undeclared or recently obtained assets were worth considerably less than the fines.
  32. This proposal will affect a small number of people each year, estimated to be less than 100.<sup>6</sup> They will be informed that their arrangement has been cancelled and enforcement action has been initiated. They will be advised of the reasons for the cancellation and will be able to challenge this decision, including asking a judge to review the cancellation decision. The judge can confirm, modify or cancel the registrar's decision.
  33. In some cases, the person will learn of the cancellation when enforcement action is taken – for example, the seizure of property. However, seizures can be challenged and seized property is returned if the challenge is successful.

#### *Prompt collection of fines*

34. The aim of the first two grounds – false information and improved financial circumstances - is to secure prompt payment of fines from people who can afford to pay without incurring undue hardship. There is a risk that cancellation could be based on false information. In these situations, enforcement action will be unsuccessful because there will be no property or money to seize. The voluntary arrangement will be reinstated on the same terms in these cases.
35. Immediate cancellation in these two situations will achieve the first objective of maintaining the credibility of fines as a penalty.
36. However, this proposal will reduce procedural fairness. Enforcement action could be taken on the basis of false information supplied by vexatious or aggrieved people because the person did not have the right of reply. This could cause significant undue distress.
37. The determination of an appropriate balance between prompt collection and procedural fairness is inherently subjective. The Ministry considers the tight targeting of these grounds will ensure the loss of procedural fairness is restricted to people who are trying to avoid paying their fines as promptly as possible. Consequently the Ministry considers that these grounds also satisfy the second objective of an appropriate balance between prompt collection and procedural fairness.

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<sup>6</sup> Most people will still be given 10-days to make submissions before their arrangement is cancelled.

### *Resolution of fines prior to leaving New Zealand*

38. The aim of the third ground is to ensure that people who meet the monetary criteria for interception at an airport cannot leave New Zealand for an extended period or permanently without resolving their fines. The monetary criteria are court imposed fines of at least \$5,000 or any amount of reparation. Fines can be resolved through payment, the completion of an alternative sentence imposed by a judge, the suspension of enforcement action or remittal by a judge.
39. A warrant to arrest is also required. A warrant can only be issued if the court has been unable to locate the person – that is, the court's attempts to contact the person to verify the accuracy of the information about their travel plans has been unsuccessful. This will mitigate the risk of interception being based on false information to some extent. However, the extent of the court's efforts will depend on how close the alleged date of departure is.
40. If the court is able to contact the person and:
- the information about the person leaving New Zealand is false, they will retain their time payment arrangement;
  - the person is leaving New Zealand for a short period, they may be able to retain the time payment arrangement if they cannot afford to pay their fines in full without incurring undue hardship and if the payments will continue during their absence;
  - the person is leaving New Zealand for an extended period or permanently within the next ten days and cannot afford to pay their fines, their arrangement will be immediately cancelled and they will be summoned to appear before a judge to determine the most appropriate way of resolving their fines before they leave New Zealand. (A warrant to arrest could be issued if a registrar considers this to be necessary to ensure they do not leave New Zealand before the hearing.)
41. If the person is not able to be contacted and is instead intercepted at the airport and is unable to pay their fines, the Police will usually let them continue with their travel if they will shortly be returning to New Zealand or they will be arrested and brought before a judge if they were intending to leave New Zealand for an extended period or permanently. Most people pay their fines at this point.
42. For the few people, who cannot pay, the judge can resolve:
- the fines by replacing them with another sentence or remitting them. The person could be required to remain in New Zealand until an alternative sentence is completed. This decision will be made by the judge based on their assessment of the likelihood of the person returning to New Zealand;
  - the reparation by replacing it with any sentence including prison that could have been imposed at the time of sentencing if the judge is satisfied that the defendant now cannot afford to pay or that they provided false or misleading financial information at the time of sentencing. The judge is required to consider the victim's views. If reparation cannot be collected, victims generally prefer the reparation to be replaced with the sentence that would have been imposed if the person had not offered to pay reparation.

43. The numbers involved are expected to be so low that this proposal will not have a noticeable impact on the number of people serving substitute sentences.
44. Immediate cancellation on this ground will achieve the first objective of maintaining the credibility of fines as a penalty.
45. The assessment of an appropriate balance between procedural fairness and the prompt collection of fines involves weighing the unfairness of interfering with a person's overseas travel without warning against the impact on the credibility of fines of allowing people to leave the country without resolving their fines.
46. The Ministry acknowledges that interception and potentially arrest at the airport entails a serious infringement of civil rights relating to freedom of movement, the right to leave New Zealand and protection against arbitrary arrest, as well as causing significant inconvenience and distress to the person. To mitigate this impact, unilateral cancellations are limited to people who owe reparation or court imposed fines of at least \$5,000 imposed to sanction serious offending and who are intending to leave New Zealand for an extended period or permanently without resolving these penalties.
47. On balance, the Ministry considers priority should be given to resolving fines and reparation in this situation because:
  - the courts impose fines and reparation to sanction serious offending. Infringement fines issued by the Police and local authorities for less serious offending are excluded;
  - fines and reparation can only be enforced within New Zealand;
  - at the time of sentencing, the person convinced a judge that they could afford to pay the fines or reparation ;
  - in the case of reparation, the person might have avoided prison and/or received a reduced sentence because of their offer to pay reparation;
  - the person has knowingly put themselves in this position. Interception at airports is mentioned in all fines enforcement materials including television advertisements;
  - every person who succeeds in leaving New Zealand without resolving their fines or reparation encourages others to try to do so as well.

### *Alternative options*

48. The only alternative options identified were the adoption of a shorter notice period, such as three days in these three situations or the retention of the status quo.
49. A shorter notice period would not address the objective of improving the credibility of fines because it would still provide people with an opportunity to 'hide' money or property before enforcement action could be taken. However, it would reduce the likelihood that the person could leave New Zealand for an extended period or permanently before enforcement action could be taken.
50. A shorter notice period would provide greater procedural fairness and thus, arguably, it would achieve a better balance between prompt collection and procedural fairness.

51. The status quo does not achieve the first objective and, in the Ministry's opinion, places greater emphasis on procedural fairness than on the prompt collection of fines in these three circumstances.

### ***Consultation***

52. The following agencies were consulted on this RIS: Accident Compensation Corporation, Crown Law, the Departments of Corrections, Inland Revenue and Internal Affairs, Land Information New Zealand, the Ministries of Business, Innovation, and Employment, Health, Pacific Island Affairs, Social Development, Transport, New Zealand Customs, New Zealand Police, New Zealand Transport Agency, the Office of the Privacy Commissioner, Real Estate Agents Authority, the State Services Commission and Te Puni Kōkiri.
53. The Department of the Prime Minister and Cabinet, The Treasury and the Parliamentary Counsel Office were informed.
54. Heads of Bench, the New Zealand Law Society, the Auckland District Law Society, the Criminal Bar Association and the New Zealand Bar Association were also consulted.
55. The feedback was supportive of the preferred option.

### ***Conclusions and recommendations***

56. The Ministry considers the preferred option of authorising unilateral cancellation of voluntary time payment arrangements in three circumstances satisfies the two objectives to a greater extent than the alternatives. The Ministry acknowledges it will entail a reduction in procedural fairness for a small number of people. This option will have minimal impact on the criminal justice sector because most of these people will pay their fines when they are intercepted.

### ***Implementation plan***

57. The Summary Proceedings Act will be amended through the Courts and Tribunals Enhanced Services Bill to implement the preferred option.
58. Following enactment, registrars will receive training on the scope of their new powers and the standard procedures for entering into voluntary arrangements will be amended.
59. The Notice of Fine and other similar documents will be amended to warn people of the risk of unilateral cancellation.
60. These costs will be absorbed within baselines. Costs will be low as no information technology changes will be required.
61. The new provisions will come into effect on the day after enactment. They will apply to all voluntary arrangements that are operating at this time because fines enforcement is an administrative rather than a judicial process.

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

62. The Ministry will monitor the effectiveness of the amendments, particularly the extent to which cancellations are made based on inaccurate information and the number of additional substitute sentences that are imposed.