

Courts and Criminal Matters Bill – Regulatory Impact Statement

Introduction

The Courts and Criminal Matters Bill is an omnibus Bill amending 20 statutes to enhance the courts' powers and processes for the collection of fines and other monetary penalties, and civil debt. The Bill contains three major policy proposals, and a large number of consequential amendments of a comparatively minor, technical nature.

The three major policy proposals are known as the Credit Reporting and Super Priority, and the Driver Licence Stop Orders initiatives.

Regulatory Impact Statements for these three initiatives were prepared and assessed in accordance with the respective requirements that applied at the times Cabinet made the principal policy decisions, as follows:

- Credit Reporting and Super Priority – April 2009, in accordance with the then guidelines administered by the Treasury;
- Driver Licence Stop Orders – July 2008, in accordance with the then guidelines administered by the Ministry of Economic Development.

The original Regulatory Impact Statements presented to Cabinet are set out on the following pages of this document.

Credit Reporting and Super Priority - Regulatory Impact Statement 2009

Executive summary

1. This Regulatory Impact Statement examines proposals to establish Credit Reporting and Super Priority as enforcement measures for overdue fines and reparation (collectively referred to as penalties)¹. Given the large (and growing) amount of outstanding penalties, the effectiveness of monetary penalties as a sanction for offending is being eroded. The threat of Credit Reporting will provide people who can afford to pay their overdue penalties with a stronger incentive to voluntarily resolve them. Credit Reporting will also improve the liquidity of the credit providing industry by enabling better informed decisions to be made before advancing credit to people with substantial overdue penalties. Collectively, Credit Reporting and Super Priority could reduce the ability of people with unaffordable levels of overdue penalties to take on further unaffordable financial commitments, particularly for property that could be seized by the court. (When heavily financed property is seized, people are usually not up to date with their payments.)

Adequacy statement

2. The Ministry of Justice confirms that this paper complies with the requirements for Regulatory Impact Statements.

Status quo and problem

Credit Reporting

3. As at 31 December 2008, over half a million people and organisations owed penalties totalling \$790.2 million. Over 80% of these penalties are unpaid infringements that have been filed for enforcement by the Police, local authorities and other government agencies. The amount outstanding is increasing each year. This is eroding the credibility of penalties as a sanction for offending.
4. Around 57 per cent of people with penalties owe less than \$500. Many of these people can afford to pay their penalties but choose not to do so until an enforcement action is taken against them (through mandatory deductions from wages or bank accounts where possible, but often requiring a visit by a Court Bailiff with a view to seizing and selling property to pay overdue penalties). In essence, the Bailiff's visit often acts as an incentive to take action. These visits are costly, and can only provide the incentive to take action to a small number of the people estimated to need such an incentive (between 156,000 and 171,000 individuals). A more effective and wider incentive to take action is required, without incurring the high cost of individual visits.

¹ In this paper, "penalty" or "penalties" includes fines (whether Court-imposed or unpaid infringement fines), reparation awarded to victims, associated costs and fees, and once in place, the proposed offender levy. An "overdue penalty" is one which has not been paid within 28 days of imposition by the District Court or within 14 days in the High Court.

Super Priority

5. The infringement system is based on the premise that people who incur infringements are able to pay the infringement fee and that they will do so voluntarily. As the range of offences and the level of infringement fees have increased over the last decade, this premise has ceased to be valid for many, particularly young people and low income earners.² Infringement issuing agencies have advised that 90% of infringements issued to young people are not paid voluntarily and are filed in the court for enforcement.
6. A small group of people (38,500 people, or 7.5 per cent of people owing penalties) owe over half of the value of outstanding penalties. Most of this group cannot afford to pay their fines and thus these fines are uncollectible.
7. Uncollectible fines can be substituted for alternative sentences, most commonly community work. However, this does not prevent these people from continuing to accumulate penalties. It also increases the risk of these people being inappropriately escalated up the penalty tariff if they fail to comply with their alternative sentences or commit further offences. Greater use of alternative sentences to resolve unaffordable fines would also impose significant costs on the State. For example, it would cost more than \$7 million each year if an additional 3000 people with unaffordable fines were to be sentenced to community work.³
8. Credit providers have complained for many years about penalties owed by credit applicants being invisible to them, (or at least not independently verifiable in a timeframe that fits with their business needs) and about the additional compliance costs arising from the seizure of heavily financed property. If property subject to finance is seized – usually a security registered on the Personal Property Securities Register or PPSR – the creditor has to submit a claim to that property and if the case is not considered to be clear-cut enough to be considered by a Judge in chambers, the creditor has to attend a court hearing.⁴ If the Judge rules in the creditor's favour, Judges usually order the sale of seized property with any surplus sale proceeds being applied to the overdue penalties. The property cannot be returned to the person with the overdue penalties. Judges also sometimes order the finance company to pay the seizure costs from the sale proceeds. Most people are not up to date with their payments and the outstanding loan is often significantly greater than the sale proceeds. This leaves the creditor with an unsecured debt to collect. These impacts will be intensified by the proactive seizure of heavily financed vehicles.

² This premise is still valid for some infringement offences. Local authorities report a 80-90% voluntary payment rate for parking infringements and the Police report that around 75% of speed camera infringements are paid voluntarily.

³ Based on sentencing patterns between 2004 and 2007, this would result in around 390,000 additional community work hours each year. Around 690 of these people would be likely to breach these sentences and would receive further sentences equating to a further 43,000 additional community work hours and the equivalent of 14 additional prisoners each year.

⁴ It is not uncommon for the family or friends of people whose property has been seized to claim security over that property on the basis of a private loan. Judges require proof that a loan was actually made and that repayments are being made before they will take account of such loans. In many cases, the claimant is not able to satisfy the Judge about these matters.

9. Legislative changes are also proposed to be made to authorise bailiffs to seize heavily financed vehicles in order to reduce traffic offending opportunities. This will close a loophole that is currently exploited by some people with unaffordable penalties. They deliberately drive heavily financed vehicles because they know that the vehicle cannot be seized and sold to pay penalties if the bailiff knows that it is heavily financed. Bailiffs can only seize and sell property that belongs to the person with overdue penalties – heavily financed property is effectively ‘owned’ by the secured creditor. At present, heavily financed property is sometimes seized because this information is not available to the bailiff at the time of seizure. In future, bailiffs will be proactively seizing heavily financed vehicles. This will increase the impact of seizures and subsequent property sales on the credit providing industry.

Objectives

10. The objectives for the chosen options for Credit Reporting and Super Priority are to:
 - 10.1. increase the immediacy and deterrent effect of infringement notices, fines and reparation in order to break the offending cycle and to enhance the effectiveness and credibility of monetary penalties as a sanction for offending;
 - 10.2. increase the incentive for people to voluntarily pay their penalties, for those that can afford to do so;
 - 10.3. focus the most resource-intensive enforcement tools such as property seizures on the resolution of penalties that cannot be resolved in any other way;
 - 10.4. provide greater certainty of outcomes associated with the disbursement of the sale proceeds of heavily financed property seized by the Court;
 - 10.5. provide additional information to the credit industry to allow them to better assess the credit worthiness of individuals with overdue penalties , particularly those seeking credit to purchase property that could subsequently be seized by the court; and
 - 10.6. protect the privacy of people owing penalties to the maximum extent possible when the proposed Credit Reporting system is operating.

Alternative options

Credit Reporting

11. Three implementation options were considered for delivering Credit Reporting during the consultation round:
 - 11.1. ***Option 1*** - A Ministry of Justice-run database which would provide credit reporters with access (via an automated matching process) to a subset of the personal information held by the Court. This would enable credit reporters to determine if the personal details of applicants were similar to those of a person with overdue penalties before submitting a request to the Ministry of

Justice for the overdue penalty balance. This option was not proceeded with due to the significant privacy impacts created by the proactive release of personal information to the credit reporting industry.

- 11.2. **Option 2** - Establishing a government wide and operated unpaid debt and penalty reporting agency which would report all debt and penalties owed to the state and to the courts to the credit reporting system. Establishing a state sector credit reporting agency, drawing in other state agencies carrying significant levels of debt, e.g. Inland Revenue Department, Ministry of Social Development, and the Housing NZ Corporation saw no support, as the respective agencies have different legislative regimes and policies affecting the release of information on people owing money to them, and not all of that has the nature of Court-ordered penalties.
- 11.3. **Option 3** - Establishing a publicly accessible database on the Internet detailing personal data on people owing penalties, and the amounts and reasons for the overdue penalties based on the Registry Trust Limited model operating in the United Kingdom. There was no support for the publicly accessible register, as it created insurmountable privacy issues. The UK programme is also priced unattractively for use by credit reporters.

Super Priority

12. The only alternative to Super Priority is the retention of the status quo. Maintaining the status quo would need to take account of the changes that would be introduced by the implementation of the credit Reporting initiative and the proactive seizure of heavily financed vehicles. Maintaining the status quo could reduce the effectiveness of the Credit Reporting initiative if most credit providers conclude that the compliance costs arising from being required by the court to sell seized property and to collect the balance as an unsecured debt are not outweighed by the benefits of the court repossessing vehicles on their behalf from people who are behind in their payments. This would not be an efficient or effective use of court resources.

Preferred options

Preferred Option - Credit Reporting

13. The Credit Reporting initiative proposes the release of the overdue penalty balance of eligible people into the private sector credit industry, via credit reporters. This will occur in real time using an automated information matching system. An associated benefit is the provision of updated contact and employment information to be released by the Ministry of Justice to the Court.
14. This initiative will include all overdue penalties that:
 - 14.1. are *not* subject to court orders relating to name or identity suppression; or
 - 14.2. are *not* from the Youth Court or the Family Court.
15. Also excluded will be people with penalties not overdue, including those that are subject to a current time payment arrangement or active enforcement action, or that are under appeal. People will be able to avoid credit reporting by complying with

voluntary or mandatory time payment arrangements.

16. As at 31 May 2008, Credit Reporting would have affected over 270,000 people who owed more than \$400 million in overdue penalties. This equated to 76% of all people with overdue fines or reparation. This group owed 92% of all overdue penalties.

Credit Reporting process

17. Credit reporters will be able to obtain a new piece of information – the amount of overdue penalties owed by eligible people - from the Ministry of Justice’s database. It is proposed that all agencies that can seek credit reports (agencies seeking credit reports⁵) will get them from a credit reporter (as they do now).
18. To obtain the overdue penalties, the credit reporter will electronically submit the following applicant information to the Ministry - Full name; Aliases (if any); Sex; Date of Birth; Current address; Past addresses (up to 2); Occupation; Employer name; Assurance of consent (this is assurance that the credit applicant has provided informed consent to the information being passed to the Ministry of Justice).
19. The Ministry will use the first six items to undertake a computer-based, automated matching process. The information submitted will be compared to the details of people owing overdue penalties. If a sufficient degree of match happens⁶, the overdue penalty balance will be released to the credit reporter. This release will happen automatically on a successful automated match, and the information will be released in real time.
20. The credit reporter will be entitled to report the overdue penalty balance to the agency seeking the credit report. The credit reporter will not be entitled to associate the information with the credit file of the individual (i.e. they will need to run a match each time a credit report is sought on an individual).
21. This approach was chosen because it was the most consistent with the current credit reporting environment and provided the most straightforward development process. It also provides the greatest degree of privacy protection of the options considered. Since it was selected, it has been further refined to improve the privacy protection it offers people with overdue penalties.
22. Credit Reporting will provide the credit industry with access to information on overdue penalties that has previously been denied. This denial generates unknowns for an industry reliant on effective risk evaluation in its business decisions. This results in frequent complaints from credit providers that they would not have lent money to persons owing significant amounts of penalties if they had known. They have regularly asked the Ministry of Justice to make this information available. The Credit Reporting proposal addresses that concern. It is worth noting

⁵ All types of people seeking credit reports will be referred to as “agencies seeking credit reports” for the rest of the paper. This is to distinguish them from credit providers (one particular type of agency seeking credit reports), as Super Priority is specific to credit providers, not other types of agencies.

⁶ What will be “sufficient degree of match” will be determined in conjunction with the Office of the Privacy Commissioner.

that this information could be provided to the credit provider with the applicant's permission on a case by case basis, but as the Ministry treats such requests as Official Information Act requests, the response time would not be commercially viable.

23. Two additional benefits arise from the Credit Reporting proposal (in addition to Super Priority):

23.1. The Ministry will undertake a further verification process if information submitted is "close"⁷ to the details of the person that owes overdue penalties, but is not sufficient to generate an automatic match. This "near match" will not result in the Ministry releasing the overdue penalty balance, as it will not happen in real time. It will potentially allow information on a larger pool of people owing penalties to ultimately be released to the Court though (as discussed in the next paragraph).

23.2. In a subsequent process, information submitted to obtain an overdue penalty balance will be released to the Court, which can use this information to contact the person with overdue penalties to collect or enforce them. No information will be released to the Court until the credit applicant has been notified by letter and had a chance to challenge the match. This will enable them to dispute that they are the person owing the penalties or that their updated information should be released to the Court. If the proposed release is not challenged, or the challenge is unsuccessful, the information will be released to the Court.

Preferred Option - Super Priority

24. Under the Super Priority proposal, the Court will obtain higher priority over secured property of a credit provider, if the loan was advanced when the overdue penalties could have been released under the Credit Reporting proposal and when that property is subsequently seized by the Court, some or all of these discoverable penalties are still overdue. Super Priority will also not apply where person with overdue penalties has been declared bankrupt or the company has become insolvent.⁸ Failure to seek information about overdue penalties will not prevent the District Courts gaining Super Priority if the overdue penalty balance was releasable.

25. Currently, the Court seizes about 3,500 items (mainly vehicles) each year. Not all of these items will have securities associated with them. However, the statutory authorisation for the seizure of heavily financed vehicles could increase the proportion of seizures affected in future. In the long term, this increase is expected to be offset by the collective impact of the Credit Reporting and Super Priority initiatives. Finance companies may be less likely to provide finance for property that can be seized by the court to people with substantial overdue penalties. This could reduce their ability to take on further unaffordable financial commitments instead of resolving their penalties.

⁷ Again, what will constitute a "close" match will be determined in conjunction with the Office of the Privacy Commissioner.

⁸ Super Priority will cease upon bankruptcy or insolvency and will not subsequently be reinstated.

26. This proposal extends the existing power of the Court to override finance agreements and to require creditors to sell seized property instead of returning it to the person with overdue penalties. While the courts generally rule in the creditor's favour if the security is registered on the PPSR, Super Priority will provide greater certainty to credit providers. They will know the extent of their risk if secured property is subsequently seized – that is, the court will only have priority for the overdue penalties that were discoverable on the time of the credit decision and potentially for seizure costs. It will also provide Judges with greater statutory direction as to how to disburse the proceeds of the sale of the seized property. These decisions are currently made on the basis of case law.
27. The extent to which the property rights of secured creditors will be overridden will be limited to situations that satisfy all of the four following criteria:
- The overdue penalties were reportable (through Credit Reporting) on the day the credit report was sought, or if no credit report was sought, on the day the decision to issue credit was made; and
 - Some or all of these penalties are still overdue and the person has not been declared bankrupt or the company become insolvent in the meantime; and
 - The Court has seized the property secured against the loan, in order to sell it to pay these overdue penalties, and
 - The credit provider has submitted a successful third party claim to the Court to recover the seized property as security for the loan.
28. Super Priority builds on existing statutory precedents that enable fines to survive bankruptcy and for fines to be enforced against companies in liquidation.⁹ This recognises that in some situations, it is appropriate for penalties as sanctions for offending to be given higher priority than outstanding debts.
29. Creditors will be able to protect their property rights by not lending money to people with substantial overdue penalties to purchase property that could be seized by the Court. The feasibility of Super Priority is totally dependent on Credit Reporting providing credit providers with ready access to information about overdue penalties.
30. Super Priority also has an additional benefit for Credit Reporting. It will ensure that credit providers and reporters have an incentive to obtain the overdue penalty balance. If they do not seek it and the person has overdue penalties, their security may be over-ridden.

Estimated Impacts

Benefits to the Credit Reporting Industry

31. Credit reporters provide a variety of services that allow credit providers and others seeking credit reports to better assess their credit worthiness, and to verify the identity of the credit applicant. Allowing them to consider overdue penalties improves the ability of the Credit Reporting Industry to assess risk, resulting in a more complete assessment being provided to their clients.

⁹ See section 232 of the Insolvency Act 2006 and section 308 of the Companies Act 2008.

32. Super Priority is likely to drive some credit providers to use credit reporters' services, where they currently don't, to avoid the risk of Super Priority over-riding their security.

Benefits to the Credit Providing Industry

33. Credit providers have complained for many years about penalty balances owed by credit applicants being invisible to them (or at least not independently verifiable in a timeframe that fits with their business needs). They also complain about the costs arising from the seizure of secured property such as having to submit claims to the Court for seized property and if successful, being required to sell that property, leaving an unsecured debt. Allowing real time, automated access to penalty information (via credit reporters) will improve their ability to assess the risk of the credit applied for all credit applicants. This works in two ways: they have a better idea of the risk associated with lending to those with overdue penalties, but also better assurance that those individuals that inform them that they have no overdue penalties are telling the truth.
34. This has the potential to have substantial benefits by reducing credit providers' exposure to "risky" loans, leading to better long term liquidity. Currently, over 530,000 individuals or corporations owing penalties¹⁰, and an estimated 271,000 would be eligible for credit reporting. It is not known what proportion of this group might be actively seeking credit, but the large numbers eligible could significantly enhance the ability of the credit industry to lend prudently.
35. While Super Priority will override securities in cases where the credit provider could have discovered the overdue penalties, the trade-off is that credit providers will get greater certainty regarding the extent of their exposure if secured property is subsequently seized by the court. They know they will potentially be overridden up to the balance released (and if the particular penalties making up this balance have been paid or part paid, their potential liability is reduced). There will also be absolute certainty that nil balance was released, the Judge will rule in their favour. (Super Priority will not apply if a nil balance is erroneously released due to a system error or any other reason.)

Benefits to the enforcement of penalties

36. A trial data match with Veda Advantage has been undertaken to provide a robust and statistically valid estimate of the benefits of the Credit Reporting proposal.¹¹ Applying these percentages to 271,000 people with eligible overdue penalties on 31 May 2008 generates the information contained in the appendix.
37. Of the sample, over 99% (or an estimated 268,000 people) were on the Veda database, indicating a potentially high degree of cross-over between people eligible for Credit Reporting and those that are credit active or have been. Around 66% (or an estimated 176,000 people) had been credit active at least once in five years.

¹⁰ Not all of which will be credit reported or eligible to do so.

¹¹ The trial data match involved a sample of 480 people who had overdue fines or reparation on 1 July 2003. This period was selected because the Credit Reporting Privacy Code 2004 authorises credit information to be retained and used for five years, so information over the 5 years following this date was analysed.

This 176,000 people are the group most likely to see the incentive effect of credit reporting, as they are credit active.

38. In addition, around 56% (or 151,000 people) had no adverse items included on their credit reports (referred to as “credit defaults”) irrespective of whether they sought credit. The 151,000 in this group feel the incentive to resolve their penalties, purely to protect their good credit rating. The incentive will be highest for those with both no credit defaults that are also credit active¹².
39. Of the people that are credit active, 56% or nearly 99,000 people would have had their penalty balance released at least once over the 5 year period, if Credit Reporting had existed. The release of their overdue penalties is likely to have been sufficient to prevent people in this group from accessing credit on favourable terms. This impact is also likely to have provided sufficient incentive for many people in this group to voluntarily contact the District Courts to resolve their penalties in order to avoid their penalties potentially being included in credit reports.
40. Of this group, the Ministry of Justice would have potentially received new contact or employment information on around 34% (nearly 34,000 people).¹³
41. Super Priority will mean that in cases of seized property, the balance reported at the time of advancing the credit will be payable towards the overdue penalties if these are still overdue and the person has not been declared bankrupt or the company become insolvent in the meantime. This situation is likely to occur far more often than currently occurs due to the proactive seizure of heavily financed vehicles in future, meaning it is more likely that the sale proceeds of seized property will be able to be used reduce penalties than occurs now. However, given the relatively small number of seizures each year, Super Priority will not result in a significant reduction in the total pool of penalties owing. It will, however, increase the deterrent effect of seizures for people who can afford to resolve their penalties, enhancing the incentive effect of Credit Reporting.

Costs to the Credit Reporting Industry

42. Costs will be imposed on the credit reporting industry mainly. These will consist of:
 - 42.1. system/connection costs to interface with the Ministry’s database;
 - 42.2. system costs to enable the released information to be incorporated into their credit reports;
 - 42.3. system costs to ensure appropriate storage of the information;
 - 42.4. changing their subscriber agreements with clients
43. For both credit reporters and agencies accessing credit reports, there will be audit requirements and associated costs imposed. These are not expected to be significantly costly per audit though. In addition, if there are complaints to the

¹² The size of this group cannot be estimated from the information drawn from the sample.

¹³ Though it is impossible to measure how much of this would be “new information”, but this underestimates the effect as there are other fields for which no “current” status is maintained, such as occupation or employer.

Privacy Commissioner or the Human Rights Tribunal, the investigation and resolution of these complaints may impose costs.

44. No estimate of compliance costs for the credit reporting industry as a consequence of Credit Reporting has been calculated. While not specifically queried, consultation with the industry has not identified compliance costs as a significant issue. The industry is fairly flexible given the nature of their current data collections activities from many and varied sources.

Costs to the Credit Providing Industry

45. The only new costs imposed on the credit industry by the Credit Reporting initiative is likely to be audits to ensure the system is working appropriately and access is being sought for appropriate purposes. The cost of audit is not expected to be high, and will be designed in such a manner to be as consistent with existing audit processes in the industry as possible.
46. There are likely to be some adjustment costs in amending and updating current consent components of credit applications, to ensure they obtain consent for the information to be passed to the Ministry of Justice. The Ministry will draft some appropriate wording to help credit providers adjust their agreements, and provide guidance material to assist credit providers to inform applicants of what giving their consent means.
47. Costs associated with retaining records are incurred now, and the storage of released penalty information will not change the nature of these costs.
48. The costs arising from the seizure of secured property by the court will remain unchanged per action. However, the number of actions could increase if credit providers continue to advance loans for property that is seized by the Court. In this case, providers would need to submit a larger number of claims for seized property and could receive a smaller proportion of sale proceeds due their loss of priority, leaving them with larger amounts to recover as unsecured debts. However, it is more likely that they will stop advancing riskier loans (due to penalty balances being released), with a downstream outcome of less claims and Court appearances.

Costs to the Ministry of Justice

49. Table 1 provides a high level cost estimate for the Ministry of Justice to implement this initiative. All figures are GST exclusive.

Table 1: High level cost estimate

Cost (\$m)	2010/11	2011/12	Out Years
Capex	0.975	-	-
Opex	1.629	1.056	0.541
Total	2.604	1.056	0.541

50. The bulk of these costs are system based developments to create the transaction system for credit reporters, and the ongoing maintenance costs of this system. In addition, the Ministry of Justice will also incur one-off IT costs making changes to

the PPSR computer system to enable Court Registrars to remove security interests from the Register prior to the sale of seized property.

51. In terms of ongoing costs, most of this will be system maintenance and support. There will be a small amount of additional manual work processing “near” matches. There will be the need to manage additional complaints and investigations, but these are not expected to be a significant cost. The Ministry already runs a 24/7 Contact Centre which would be able to deal with individual complaints if lodged out of normal office hours.

Net Present Value

52. Table 2 provides the Net Present Value estimate over a 10 year period. All figures are GST exclusive.

Table 2: Net Present Value (NPV) estimate

Highest Cost NPV (\$m)	Lowest Benefit NPV (\$m)	Lowest benefit/highest cost ratio NPV (\$m)	Lowest cost NPV (\$m)	Highest Benefits NPV (\$m)	Highest benefit/lowest cost ratio NPV (\$m)
-\$4.13	\$76.30	\$72.17	-\$3.38	\$130.22	\$126.84

53. The Net Present Value benefit of Credit Reporting and Super Priority over ten years is estimated at between \$72.17 million and \$126.84 million.
54. This Net Present Value analysis is based solely on fiscal costs to Government associated with this initiative. It takes no account of any expected wider social benefits derived from collecting larger amounts of penalties or reducing offending, or any social costs arising from increased collection from low income earners.
55. It also makes no estimate of the compliance costs or adjustment costs imposed on the credit reporting industry or other participants. While not specifically queried, the consultation with the industry has not identified these adjustment costs as a significant issue.

Risks and mitigation

56. The following major risks/issues have been identified (in no particular order):
- 56.1. **Mistaken identity:** The overdue penalty balance for an individual is incorrectly associated with a credit applicant, meaning the applicant is incorrectly denied credit (or a job, or housing or insurance) or has harsher terms imposed. This impact will be irreversible if the agency which requested the credit report does not provide the applicant with an opportunity to dispute the accuracy of the match before denying credit or insurance cover, or awarding the tenancy or the job to another applicant. The Ministry of Justice would expect a significant proportion of agencies to provide applicants with this opportunity because it is in their best interests – i.e., credit providers and

insurers do not want to decline applicants inappropriately and landlords and employers want tenancies and jobs to go to the best candidate.

Mitigation: Proposed matching algorithm will be very strict (details will need to be finalised in conjunction with the Privacy Commissioner). For example, the risk will be minimised by allowing the matching process to include address information. This works to minimise the risk as very few people with similar names and dates of birth are likely to have lived at the same address.

- 56.2. **Public sector agencies transferring information on money owed to them to private sector agencies:** With the exception of outstanding vehicle licence fees, this is not occurring in New Zealand at present.

Mitigation: This is a natural outcome of the proposal. Risks are mitigated by limiting the information released, and through controls on subsequent use through agreements and audit.

- 56.3. **Out of date penalty balances:** If an overdue penalty balance is released, it may very quickly be out of date due to the arrival of new penalties, appeals, remittal or other Court actions.

Mitigation: Access agreements will require credit reporters to destroy overdue penalty information after it has been used for the credit report for which it was sought (within 1 day), or immediately, if it is no longer required. They will not be allowed to associate it with a credit file.

- 56.4. **Proof of identity:** The provision of overdue penalty information to credit agencies may result in legal risks for the justice system because proof of identity is not a current requirement for people affected by infringements. This generates the risk of inaccurate information being filed with the court and subsequently released to credit providers.

Mitigation: Ministry of Justice will only release details of people for whom it holds full identifying information and can be confident of its accuracy.

- 56.5. **Driving people to marginal lenders:** A potential unintended consequence of super priority could be to drive people on low incomes to the marginal lender market because main stream lenders will refuse to offer credit.

Mitigation: People owing penalties will always be able to contact the Court to resolve their penalties, so any impact of the Initiative should not exacerbate this effect.

- 56.6. **Consumer Welfare Issues:** Super Priority could be invoked over household items that are "necessities", such as washing machines and fridge/freezers.

Mitigation: Bailiffs are required to exercise their seizure powers reasonably. Bailiffs cannot seize property if this would cause

extreme hardship. *As seizure is a pre-requisite before Super Priority can exist, the exercise of the seizure process reasonably prevents this occurring.*

- 56.7. **Separation of powers:** The Ministry of Justice has a unique role as an agency of the executive branch of Government that provides administrative support for the Courts (the Judicial Branch). As such, the Ministry of Justice holds Court records not in its own right, but as agent for the Courts. Using Court information for credit reporting potentially confuses the line between the Executive and Judicial branches of Government.

Mitigation: Existing processes (such as four authorised information matching programs operated by the Ministry) provide precedents for the Ministry to use the Court's information it holds to support the Courts operation. Specific statutory powers to use the information in the proposed way will be required, as well as rules for how information obtained is released to the Court.

- 56.8. **Inconsistency with the Privacy Act 1993 and the Credit Reporting Privacy Code 2004:** The credit reporting proposal does not comply with the Privacy Act 1993 or the Credit Reporting Privacy Code 2004.¹⁴ The Code prescribes the statutory framework for the collection, disclosure, retention and destruction of personal information by the credit reporting industry.

Mitigation: Specific legislative power and regulatory tools will be required. This empowers the transactions to occur (overruling the Privacy Act) but does not mitigate the privacy risks (which cannot be mitigated). A review after two years of operation is proposed to determine whether the outcomes justify the privacy impacts.

Steps taken to minimise compliance costs

57. Credit reporting is a voluntary process – no credit reporter will be required to participate, though there may be strong competitive drivers to do so. Those wishing to participate will need to agree to meeting certain standards, and to impose certain requirements on those who use their services, and that these standards and requirements will be auditable.
58. The initiative has been designed to be as consistent as possible with existing systems and processes in the credit industry and the credit reporting industry. Audit processes and costs, to the extent possible, will align with existing audit requirements.
59. In addition, the benefit to the credit reporting industry of the provision of the information free of charge is intended to compensate for any costs imposed. No estimate of any anticipated compliance costs has been made. While not specifically queried, consultation with the industry has not identified these compliance costs as a significant issue.

¹⁴ The Code has the status of deemed regulations (see section 48 of the Privacy Act 1993).

Legislative and regulatory change

60. Credit Reporting and Super Priority will principally add new sections to Part Three of the Summary Proceedings Act 1957. There will also be amendments required to the Personal Property Securities Act, and consequential amendments to other Acts.
61. To provide for appropriate controls on the information flows, supporting regulatory controls will also need to be in place, so specific regulation-making powers will also be required. As such, it will add to the stock of legislation affecting the collection of penalties.
62. The proposal will be inconsistent with the Privacy Act 1993 and the Credit Reporting Privacy Code 2004. This Code is a Code promulgated under the Privacy Act 1993, to regulate the information flows in the credit reporting industry.
63. The proposal will mainly add new legislation and amend existing provisions. It is not anticipated that any existing legislation will be made redundant.
64. Crown Law has reviewed the proposal for consistency with the New Zealand Bill of Rights Act 1990 (and, so far as relevant, the Human Rights Act 1993) and does not consider there to be any issue of inconsistency. A conclusive opinion will be provided once the proposals are in Bill form.

Implementation and review

65. Given the wide scope of the Courts and Criminal Matters Bill, and the fact that some components are enabling rather than required, it is likely the implementation may occur in tranches. Subject to legislation being passed and funding being made available, the Credit Reporting proposal is expected to come into force in mid-2011.
66. As there are a small number of credit reporters (estimated at a maximum of 20), implementation will be planned with participants directly.
67. An extensive publicity campaign near implementation together with ongoing targeted publicity is planned to notify people with overdue penalties of the Credit Reporting and Super Priority initiatives, and their potential effects. This approach has been very successful with the Ministry's Collections of Fines at Airports initiative. Many people have voluntarily paid their penalties in order to avoid the risk of being intercepted at an international airport, even though they would not have been intercepted or even close to eligible for the initiative.
68. As well as ongoing regular reporting to the Office of the Privacy Commissioner, the Ministry of Justice will undertake a review of the Credit Reporting and Super Priority proposals two years after it is implemented. This review will be done in consultation with the Office of the Privacy Commissioner. This review will result in a report to the Minister for Court and the Minister of Justice on the outcomes of this proposal and any impact on individuals.

Consultation

69. The Ministries of Consumer Affairs, Economic Development, Social Development and Transport, the NZ Police, the NZ Transport Agency, the Departments of Building and Housing, and Corrections have been consulted.
70. The Office of the Privacy Commissioner has been consulted. The Privacy Commissioner does not think that the privacy risks and impacts are outweighed by the outcomes. The Privacy Commissioner's comment is included below:
 - 70.1. The Privacy Commissioner appreciates the value of measures to address fine and reparation defaulters, and notes that this is one of a suite of proposals to address problems in this area. However, the Commissioner remains concerned about the significant privacy impacts of this particular proposal.
 - 70.2. As the paper acknowledges, some mismatches are unavoidable. Those mismatches are likely to affect applications for housing, employment, insurance, and credit, of innocent New Zealanders. Moreover, these consequences are irreversible.
 - 70.3. From the information provided to date, the Commissioner does not believe that the privacy risks to some individuals are outweighed by expected outcomes. The Commissioner recommends against pursuing this particular proposal. However, if the proposal proceeds, the Commissioner recommends Cabinet require a report back from the Ministry of Justice, in consultation with the Office of the Privacy Commissioner, on the outcomes of this proposal and its impact on individuals, two years after it is implemented.
71. The Department of Prime Minister and Cabinet, the Ministries of Pacific Island Affairs and Women's Affairs, the Office of Ethnic Affairs, The Treasury and Te Puni Kokiri have been informed.
72. For a significant period, credit providers have advised the Ministry of Justice about the invisibility of penalties to them, and the negative consequences that occur because these penalties are not visible to them when making credit decisions. A major bone of contention is the costs imposed on them when the Court seizes property from the person, and requires them to dispose of it (meaning they are out of pocket for the costs). Often they are also left in the position where the sale does not raise enough to cover the loan, leaving them with an unsecured debt.
73. As approved by the previous CBC, limited discussions with targeted individuals in the credit reporting industry have been undertaken with the feedback being that the proposed Credit Reporting Initiative is workable. [CBC (08) 25/19]
74. The feedback also strongly advocated for the release of the number of offences and the type of offending that generated the overdue penalty balance. Credit providers see this information as being of more value as a predictor of future default behaviour than just the overdue penalty balance.

75. This issue raises a question of viability. If the overdue penalty balance does not act as a predictor of future default behaviour,¹⁵ credit providers or the credit reporting industry may see little value in the accessing overdue penalty balances. This may mean there is limited uptake or a requirement for the Ministry to pay credit providers for each listing of a person with overdue penalties. Super Priority is partly designed to counter this and ensure that people will want to know (or else they potentially lose their priority), which in turn will drive demand for information about overdue penalties from credit reporters.
76. Credit providers also express a strong aversion to Super Priority as it overrides their property rights. Super Priority is the *quid pro quo* for the release of the overdue penalty balance – the credit provider gets information allowing them to make a more informed credit decision, but they could potentially have their security overridden (if they advance the credit and the penalties that were releaseable when the loan was made, are still overdue and the person has not been declared bankrupt when the court seizes that property). Super Priority applying whether a credit report is sought or not, also ensures that credit reporters are more likely to seek penalty balances (i.e. use the Credit Reporting system), to ensure they are protected.
77. These proposals have been discussed with the Chief District Court Judge. The Royal Federation of New Zealand Justices Associations has been informed.
78. Targeted focus groups have been held with local authorities, beneficiary representative organisations, and youth representatives.

Hon Georgina te Heuheu QSO
Minister for Courts

Date signed:

¹⁵ Credit reporters use various types of information and varied methodologies to predict future likelihood of default. Some of them are not convinced that the amount of overdue penalties will be a useful predictor of future default, reducing the perceived benefit to obtaining the information from the Ministry of Justice.

Appendix 1: Results of Credit Reporting Trial Data Match

Number of individuals or inquiries	Proportion of Test Sample	Number of Persons owing fines affected	Proportion of total eligible people owing fines
A. Not found on Veda's Database	0.83%	2,260	0.83%
B. Found on Veda's database	99.17%	268,961	99.17%
Of individuals found on Veda's database (B):			
C.1 those that were credit active (at least one inquiry listed over the following five years)	65.55%	176,294	65.00%
C.2 those that were not credit active (no inquiry listed over the following five years)	34.45%	92,667	34.17%
		268,961	99.17%
C.3 those that had no reported defaults over the following five years	56.30%	151,432	55.83%
C.4 those that had one or more reported defaults over the following five years	43.70%	117,529	43.33%
		268,961	99.17%
C.5 those reporting a vehicle licensing default (from Land Transport New Zealand)	19.75%	53,114	19.58%
C.5.1 of those with one or more defaults, the proportion reporting a vehicle licensing default (from Land Transport New Zealand)	45.19%		
Of those that were credit active (C.1):			
D.1 individuals that would have been eligible for credit reporting at least once over five years	56.09%	98,883	36.46%
D.2 proportion of individual credit inquiries done while eligible (as a proportion of total inquiries)	23.80%		
Of the total number of individuals that would have been eligible at least once over five years (D.1):			
E.1 Those that had a status of their address in COLLECT of:			
(a) Current	66.91%	66,161	10.35%
(b) Valid (address was correct at one point but is not current)	21.48%	21,240	3.32%
(c) Neither current nor valid	11.61%	11,481	1.80%
		98,883	15.47%

Driver Licence Stop Orders - Regulatory Impact Statement 2008

Executive summary

1. **Licence Suspension** aims to improve traffic fines and reparation collection by introducing licence suspension for people with overdue traffic fines and reparation. This encourages people to approach the Ministry of Justice (the Ministry) to resolve their overdue traffic fines and reparation. Licences will remain suspended until resolution occurs.

Adequacy

2. The Ministry has compiled this Regulatory Impact Analysis and confirms that it meets the requirements for Regulatory Impact Analyses. It has also discussed it with the Ministry of Economic Development.

Licence suspension

Status quo

3. Current collection measures focus on seizing goods which can be sold to resolve fines and reparation or paying fines and reparation through mandatory deductions from wages, benefits and bank accounts. Where payment is not possible, fines may be converted into alternative sentences by a District Court Judge or Community Magistrate.¹
4. The high percentage of overdue fines and reparation as opposed to fines and reparation that are being resolved through payment arrangements or other means is a primary driver for the need to make fines a more credible measure.² Greater incentives are needed to encourage voluntary compliance by people who can afford to pay their fines and reparation.
5. Internationally, licence suspension is widely used as a fixed term penalty for traffic offences and as a variable length fine compliance measure.³ Queensland Transport reports a 75 per cent success rate in collecting fines after threatening or imposing licence suspension. Fifty per cent of people who are advised of the prospect of licence suspension resolve their traffic fines prior to licence suspension, and a further 25 per cent resolve their traffic fines after licence suspension.⁴

Objective

6. The objective of this proposal is to implement a traffic fines and reparation collection measure which will improve proactive compliance and hence fines and reparation collection rates.

¹ Reparation is rarely substituted for an alternative sentence.

² Around 57 per cent of all unpaid fines and reparation are not under arrangement.

³ This occurs in Australia, Canada, the United States of America and other jurisdictions.

⁴ Presentation Notes of Steve Venning, Senior Business Manager (Licensing and Identity), Queensland Department of Transport, 16 November 2005

Alternative options

7. Six implementation options were considered for delivering the policy during the consultation round:
 - 7.1. **Option 1 - Licence Suspensions through the Ministry of Justice Case Management System (CMS)** This option relied on using the current link two-way between CMS and Land Transport NZ's Driver Licence Register (DLR), and incorporating COLLECT (the Ministry's fines enforcement database) information into CMS. Fundamental system incompatibilities prevented further development of this option.
 - 7.2. **Option 2 - Establishing a Link between the Ministry of Justice COLLECT system and the DLR** – These options rely on establishing a new two-way link between COLLECT and the DLR.⁵ Option 2 forms part of the final option discussed in detail below.
 - 7.3. **Option 3 - Widening the Scope of the Forbid-to-Drive penalty to People owing traffic fines** – This option was considered and then abandoned early in the consultation process, because it would add further complexity to an already complex system.
 - 7.4. **Option 4 - Driver Licence Stop Order** – A Driver Licence Stop Order (DLSO) model forms part of the final option discussed in detail below.
 - 7.5. **Option 5 - Establishing a Link between COLLECT and NZ Police's National Intelligence Application to Implement Driver Licence Stop Orders** – This option was developed to determine if the driver licence suspension and reissue process could be undertaken on a 'real-time' basis. This idea was abandoned because of its incompatibility with the need for a coherent driver licence recording system with one organisation making all changes to the DLR. There were also significant cost and risks associated with developing a real time process.
 - 7.6. **Option 6 - Revised Driver Licence Stop Order** – This option encompasses Option 2 and Option 4, and applies the existing demerit points licence suspension statutory regime and IT architecture with a few differences. This is the option which the Ministry, Land Transport NZ, NZ Police, and the Ministry of Transport wish to proceed with for driver licence suspension for overdue traffic fines and reparation.

Preferred option

8. Option 6 is the preferred option. It is the Land Transport Act 1998 *demerit point* suspension model with the following differences:
 - 8.1. All licences would remain suspended until the overdue traffic fines and/or reparation are resolved.
 - 8.2. Limited licences would also be suspended and affected people would not be able to apply for a limited licence.

⁵ There is already a one-way link from the DLR to COLLECT.

- 8.3. A person subject to licence suspension for one year and one day would not be required to resit the driver licence test unless they are already subject to this requirement because of other traffic offending.⁶
- 8.4. Licence suspension would not be recorded on the 'traffic conviction history'.
9. Other features of the proposal include:
 - 9.1. When people owing traffic fines and reparation become eligible for driver licence suspension, the Ministry will advise them by mail that if the overdue traffic fines and reparation are not resolved by a specific date, then a DLSO will be personally served.
 - 9.2. The Ministry will notify New Zealand Transport Agency and NZ Police that DLSOs have been issued, and that Ministry staff and its agents (private sector process servers) are seeking to serve a DLSO. When all other options have been exhausted for service of a DLSO, it will be passed to NZ Police for service during routine roadside stops.⁷ People will be required to surrender their driver's licence when served with DLSOs.
 - 9.3. Service of a suspension order would instantly suspend the person's driver licence. However, NZ Police would be given discretion to authorise the driver to drive their vehicle home. The person would be required to surrender their driver licence card.
 - 9.4. Drivers apprehended driving in breach of a DLSO would face the same suite of penalties as for breaching any other suspension - that is mandatory 28-day vehicle impoundment and if successfully prosecuted, mandatory licence disqualification and possibly additional fines or imprisonment.
 - 9.5. Once notified that the overdue fines and reparation are resolved, New Zealand Transport Agency will reissue the driver licence, if it has not been suspended for any other reason.

Issues

10. The following issues were considered during the consultation phase:
 - 10.1. **The differences between Australia and New Zealand** - The circumstances which make this measure successful in Australia are unlikely to be able to be replicated in New Zealand. The differences include:
 - 10.1.1. the statutory obligation to promptly update address information on the driver licence register

⁶ The Land Transport Act 1998 requires people who have been disqualified from driving or have had their licence suspended for one year and one day to resit the driver licence test. Lengthy disqualifications and suspensions are imposed for the most serious traffic offending. This requirement ensures that these people have improved their knowledge of the Road Code and their driving practices before they resume driving again. This would not necessarily be the case for people whose licences had been suspended for one year and one day for overdue fines or reparation.

⁷ In any subsequent court proceedings, proof of service would be provided by a sworn affidavit from the person who served the suspension.

- 10.1.2. compulsory third party bodily insurance
- 10.1.3. deemed service by post for all driver licence suspensions
- 10.1.4. the onus on people who owe fines to find out if their licences have been suspended rather than that state authorities having to prove service.

By comparison, in New Zealand, there is no statutory obligation to ensure address information on the Driver Licence Register is always up to date. The Accident Compensation Scheme precludes third party compulsory bodily insurance.

Deemed service for driver licence suspension by post would have to be created in statute. The Ministry and other participating agencies looked closely at doing so, but concluded that it was not possible without making considerable and untenable exceptions to New Zealand's human rights legislation and limiting the effectiveness of the driver licence system. Further, New Zealand courts would be unlikely to convict an offender or to uphold an impoundment where there is genuine doubt about whether or not the driver was aware of the posted suspension notice.

Risk assessment

- 11. The following risks were identified for Option 6 during the consultation phase:
 - 11.1. **People disadvantaged** - Licence suspension would disadvantage young, people with young families, the unemployed, and people from areas where there is no public transport. This is a recognised problem with licence suspension and disqualification - that is it has a disproportionate impact on people reliant on personal vehicles for transport. The Ministry aims to mitigate this risk by promoting the establishment of time payment arrangements; and for people whose overdue traffic fines are unaffordable, bringing these people before a District Court Judge for consideration of alternative non-monetary sentences.
 - 11.2. **Increasing the incidence of driving while suspended** – Concerns were raised at the prospect of adding new people to the treadmill of licence suspension and licence disqualification, which can lead to imprisonment. People owing traffic fines and reparation have only to contact the District Courts to pay their fines or reparation or to establish a time payment arrangement in order to avoid suspension.
 - 11.3. **Increasing the number of prosecutions of people driving without valid licences** - Based on NZ Police apprehension rates in 2006, approximately one-third of drivers whose licences had been suspended or who had been disqualified were apprehended driving. Assuming that similar patterns are experienced for drivers whose licences are suspended for overdue traffic fines and reparation and based on the service of 20,000 – 40,000 DLSOs each year, a further 6500-13,000 drivers could be apprehended driving on a suspended licence each year. NZ Police advised an equivalent number of

prosecutions could occur, which would impact on the criminal justice system. Most of these people would probably be fined with the rest being sentenced to community work (or, in a small number of cases, community detention or home detention).

- 11.4. **Impact on corrections system** - The average community work sentence for 'driving while disqualified' was 122 hours between 2004 and 2007.⁸ Taking account of the less serious nature of 'driving while suspended', around 1625 - 2750 people (25 per cent) could be sentenced to around 50 hours of community work each year. This would equate to 81,250 – 137,500 additional community work hours each year. In addition, based on the 'driving while disqualified' statistics, 12-24 people might be sentenced to community detention, home detention or imprisonment for breaching their community work sentences. This could entail up to 24 people being sentenced to up to 50 days in prison, equating to up to 3.3 additional inmates each year. This would be the worst case scenario because unlike persons driving while disqualified, the period of licence suspension for overdue traffic fines or reparation would be determined by the person – that is, they can get their licence reinstated by resolving their overdue fines or reparation.
- 11.5. **Diluting the validity of other forms of licence suspension and disqualification** - Using the same model of licence suspension as currently applies for demerit points licence suspension should mitigate any risk of dilution. The intent of the DLSO model is to build on the success of demerit suspensions. These have achieved credibility because of the certainty of personal service of licence suspensions and the severity and immediacy of mandatory 28-day vehicle impoundment for driving on a suspended licence.
- 11.6. **Impact on storage operators** - Concerns were raised over the potential impact on commercial vehicle storage operators of an additional 6500-13,000 impounded vehicles each year. About half of the vehicles currently impounded by NZ Police are not recovered by their owners, because the storage costs are greater than the value of the vehicles. Operators are entitled to sell those vehicles once they have been abandoned. New Zealand Transport Agency currently pays operators \$100 for each vehicle suitable only for scrapping. The Ministry plans to pay operators the same amount for vehicles abandoned after impoundment following the breach of a DLSO.

Costs

12. The projected establishment and operating costs for Licence Suspension and the 10 year net present value results are detailed in Tables 1 and 2.

⁸ Driving while disqualified is a more serious offence than driving on a suspended licence. It has been used as a proxy because statistics are not available for driving while suspended. All sentencing statistics have been provided by the Ministry of Justice Research, Evaluation and Modelling Unit.

TABLE 1: FORECAST COSTS OF DRIVER LICENSE SUSPENSION

Proposals	Cost \$m	2009/10	2010/11	2011/12	2012/13	Out Years
Licence Suspension	Capex	-	-	1.465	-	-
	Opex	-	-	2.341	3.952	3.561
Total	-	-	-	3.806	3.952	3.561

TABLE 2: FORECAST 10 YEAR NET PRESENT VALUES

POLICY STREAM (\$m) over 10 years	Upper Cost NPV	Lower Benefit NPV	Low range NPV	Lower cost NPV	Upper Benefits NPV	High range NPV
Licence Suspension	-\$14.85	\$69.49	\$54.64	-\$12.15	\$112.55	\$100.39

Regulatory implications

- Licence suspension for overdue traffic fines and reparation is not expected to alter the existing licence suspension framework operated by the New Zealand Transport Agency.

Legislative implications

- Amendments to the Summary Proceedings Act 1957, the Land Transport Act 1998 and possibly other Acts and their associated regulations would be required to implement Licence Suspension.

Implementation and review

- It is aimed to have licence suspension operational by mid-2012, assuming the enactment of the necessary legislation in late 2011.
- It is expected that infrastructure and business systems development would precede enactment.
- An extensive publicity campaign is planned to notify people with traffic fines and reparation of the licence suspension policy, and its potential effects. This approach has been very successful with the Ministry's Collection of Fines at Airports initiative. Many people have voluntarily paid their fines or reparation in order to avoid the risk of being intercepted at an international airport.
- A review of the effectiveness of the policy would occur two or three years after implementation.

Consultation

19. The Ministries of Consumer Affairs, Economic Development, Social Development, Transport and Youth Development, NZ Police, Land Transport NZ, the Department of Corrections, The Treasury and the Office of the Privacy Commissioner have been consulted.
20. The Departments of Building and Housing, Conservation, Internal Affairs, Labour, and Prime Minister and Cabinet, the Ministries of Agriculture and Forestry, Environment, Fisheries, Health, Pacific Island Affairs and Women's Affairs, the Offices of the Children's Commissioner and Ethnic Affairs, the Families Commission, the Human Rights Commission, the State Services Commission, Civil Aviation Authority, NZ Food Safety Authority, Maritime New Zealand, Te Puni Kokiri and Transit New Zealand have been informed.
21. Targeted focus groups have been held with local authorities, beneficiary representative organisations, and youth. These proposals are to be discussed with the judiciary.

Hon Rick Barker

Minister for Courts

Date signed: