



Compliance Monitoring and Enforcement: approach and location

Date Submitted:	4 September 2018	Tracking #: 2018-B-04764	
Security Level	In confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To: Hon David Parker, Minister for the Environment	Read prior to discussing with officials on 6 September	6 September
Copy to: Hon Eugenie Sage, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of Attachments:	2
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Rachel Ward	027 385 3046	
Responsible Manager	Fiona Newlove	022 061 9682	✓
Director	Glenn Wigley	027 491 7806	

Compliance Monitoring and Enforcement: approach and location

Purpose

1. This briefing, which has been developed with the Environmental Protection Authority (EPA), advises you on the proposed approach and location of a Compliance Oversight Unit and an Enforcement Unit (the Units). In particular, it covers:
 - a. what functions, including assisting prosecutions, the Ministry for the Environment (MfE) or the EPA could carry out to improve compliance, monitoring and enforcement (CME) under the Resource Management Act 1991 (RMA); and
 - b. which functions are better suited to the EPA and MfE, and how the functions could be split across both agencies.
2. To enable us to complete establishment work, your agreement is sought on the split of functions between MfE and the EPA to be carried out by the Compliance Oversight Unit and the Enforcement Unit.

Key messages

Improving CME will increase the accountability of resource users for RMA breaches and improve environmental outcomes

3. The purpose of establishing the Compliance Oversight Unit and the Enforcement Unit is to “improve the transparency, consistency and effectiveness of council enforcement actions” under the RMA. This is to ensure that RMA rules and decisions are upheld, to achieve sustainable management and improve environmental outcomes, particularly freshwater quality.
4. Achieving this purpose relies not just on effective enforcement, but also on robust and consistent compliance promotion and monitoring practices. As such, the Units will need to improve the full range of council CME activities.
5. Establishing the Units is part of a wider drive to improve environmental compliance. Your decisions on the Units will impact on future decisions about the roles the EPA and MfE play in respect of CME, in particular in relation to the regulation of Three Waters infrastructure (2018-B-04760 refers).

There are a range of existing statutory and non-statutory functions that the EPA and MfE could use to improve CME under the RMA

6. These functions either target:
 - a. **resource users**, such as a farm operator responsible for effluent discharge into a river, by taking or supporting an investigation or enforcement action; or
 - b. **council performance**, such as a regional council that has taken only one prosecution in the last five years, by contributing to improvements to councils’ CME activities.
7. The functions either **support** improvements to be made, or **coerce** improvements. They can be used to either respond to issues that have occurred (**reactive** functions), or prevent issues from occurring (**proactive** functions).

We recommend you take an approach which uses the full range of functions

8. We recommend the EPA and MfE develop capability to use the full range of existing functions. This would allow the agencies to select functions which are appropriate to the scale and nature of the issue and likely to have the biggest impact.

The Units have an operating budget of \$3.1 million over four years

9. With a budget of \$3.1 million and minimal opportunities for cost recovery from resource users or councils, choices will need to be made about what functions the Units uses and how these are phased over time. Additional funding for CME functions within MfE and EPA will be sought within the Vote Environment budget package.
10. We recommend the Units identify and publicise priority areas where they will focus efforts. For the first year of operation, we recommend the Units carry out functions which are likely to improve freshwater quality.

The Units will need to work within legal constraints

11. The RMA provides you with Ministerial powers to address council performance issues, such as investigating a council's performance of its functions under section 24A. These powers were designed to respond to systemic issues within councils.
12. Any person can bring a prosecution under the RMA, but without "boots on the ground" or an ability to warrant enforcement officers to collect evidence, it would be difficult for any entity other than a council to succeed.
13. Instead the EPA and/or MfE could provide technical or financial support to councils to take prosecutions. In practice this would require the council to request support, as neither agency has powers to force the council to cooperate. We recommend criteria be developed which set out the circumstances in which support can be provided.
14. Given these constraints, we recommend MfE explore options for legislative amendments to give the EPA and MfE new functions to improve CME. For example, the RMA could be amended to give either agency a direct enforcement role or the ability to cost recover from resource users or councils.
15. We could look at incorporating initial legislative amendments into the narrow RMA bill (eg to enable the EPA to warrant enforcement officers), and wider system-level amendments into advice on comprehensive resource management reform.

We recommend the Compliance Oversight Unit is established within MfE and an "Enforcement Unit" is established within the EPA

16. MfE is better suited to taking on functions which target council performance issues, having greater policy and monitoring capability. As this role would involve "overseeing" council performance, we recommend MfE host the "Compliance Oversight Unit".
17. The EPA is better suited to functions which target non-compliance by resource users, as an operational agency with greater independence and on-the-ground CME capability. As this role would involve providing direct assistance and in some cases taking enforcement action, we recommend the EPA host the "Enforcement Unit". The EPA supports this proposal.
18. Over the next four months we will keep working with the EPA to determine how the division of functions between the two Units will work in practice, the set of priorities (eg freshwater quality) to guide the work, criteria for determining when the Units will intervene including a threshold for the level of seriousness, and how the work will be funded.

Recommendations

19. We recommend you:
 - a. **Agree** to the Compliance Oversight Unit being established within MfE to take on functions that target council performance issues and any proactive functions.

Yes/No

- b. **Agree** to an "Enforcement Unit" being established within the EPA to take on functions that target resource user non-compliance, including assisting prosecutions, and an audit function.

Yes/No

- c. **Note** the Units have an operating budget of \$3.1 million over four years, and there are limited circumstances where the EPA or MfE can recover costs from resource users or councils.
- d. **Note** that additional funding for CME functions within MfE and EPA will be sought within the Vote Environment budget package.
- e. **Note** the RMA gives you Ministerial powers to improve council performance, but these are largely untested and intended to address systemic failures within councils rather than specific issues.
- f. **Note** that without an explicit statutory role to take enforcement action, it would be difficult for the EPA or MfE to take a prosecution directly.
- g. **Agree** to MfE exploring options to give the EPA and MfE a stronger statutory basis for exercising functions to improve CME and ability to cost recover from councils and resource users through:

- i. initial amendments in the narrow RMA amendment bill (minor changes, eg, to enable the EPA to warrant enforcement officers); and

Yes/No

- ii. scoping of the next phase of comprehensive resource management reform expected to begin in 2019 (more significant changes).

Yes/No

- h. **Note** we will continue working with the EPA to determine how the Compliance Oversight Unit will work alongside the Enforcement Unit, the criteria and priorities for intervening on council activities and how the Units will be funded. We will report back to you on this in December 2018.
- i. **Note** the EPA will consider the skills and expertise needed to operate the Enforcement Unit, which could include recruiting a Crown prosecutor or former regional council prosecutor to lead the Enforcement Unit.
- j. **Note** that you are meeting with officials on 6 September to discuss this briefing.

Signature

Glenn Wigley – Director
Natural and Built System
Ministry for the Environment

Hon David Parker
Minister for the Environment

Date

Compliance Oversight Unit: approach and location

Supporting material

Context

20. In December 2017, we advised you that council CME practice is variable, with some councils' activities falling short of best practice (2018-B-04710 refers). In that briefing, we outlined the key drivers of poor CME practice¹ and recommended a new approach be taken to lift CME practice by councils.
21. Some progress has been made already towards improving CME:
 - you released the *Best Practice Guidelines on Compliance, Monitoring and Enforcement under the RMA* (the Guidelines) in July; and
 - you are taking a paper to Cabinet in September on a narrow RMA amendment bill, which includes a proposal to increase infringement fines and extend the statutory timeframes for filing charges for prosecutions.
22. In May 2018, Cabinet agreed to allocate \$3.1 million to set up a Compliance Oversight Unit to improve the consistency, transparency and effectiveness of council enforcement actions.
23. Following further briefings (2018-B-04143 and 2018-B-04710) and a conversation with you and Minister Sage on 26 June, you directed us to consider how the Unit could support councils to take prosecutions, and requested we report back on the approach and location (EPA or MfE) of the Unit. You also asked us to consider the need to appoint a former regional council prosecutor or Crown prosecutor.
24. This briefing contains that advice. We are recommending that MfE is responsible for a Compliance Oversight Unit and EPA is responsible for a complementary Enforcement Unit.
25. Your decisions on the approach and location of the Units will impact on future decisions on the EPA's role in CME under the RMA and other Acts, for example in respect of three waters infrastructure (2018-B-04760 refers). A number of additional CME functions, for example in relation to plastic bags, are also in the pipeline and decisions need to be made about which agencies take on CME responsibilities.

Analysis and Advice

Purpose and priorities

To improve enforcement, the EPA and MfE should aim to improve the full range of council CME activities

26. Improving the transparency, effectiveness and consistency of council enforcement actions relies not just on effective enforcement, but also on consistent and robust compliance monitoring practices by councils.

¹ These are: lack of resources/priority given to CME; lack of capability/skills; conflicts of interest or political influence; insufficient tools or knowledge of how to use them; and lack of transparency and accountability.

27. The underlying objective for improving CME is to achieve sustainable management and improve environmental outcomes, particularly in critical areas such as freshwater quality.
28. Given the limited budget we recommend the Units identify priority areas, where there is a high-level of public interest and significant environmental impact, to focus its efforts.
29. For the first year of operation, we recommend the Units carry out functions which are likely to improve freshwater quality. In June 2019, the Units will have a better idea of where to focus efforts and could publish a forward schedule of priority areas. For example, in year 2 (2019/20), the Units could focus on dairy farm compliance and wastewater discharges. The “credible threat” of future intervention would encourage resource users and councils to strengthen compliance in those areas.

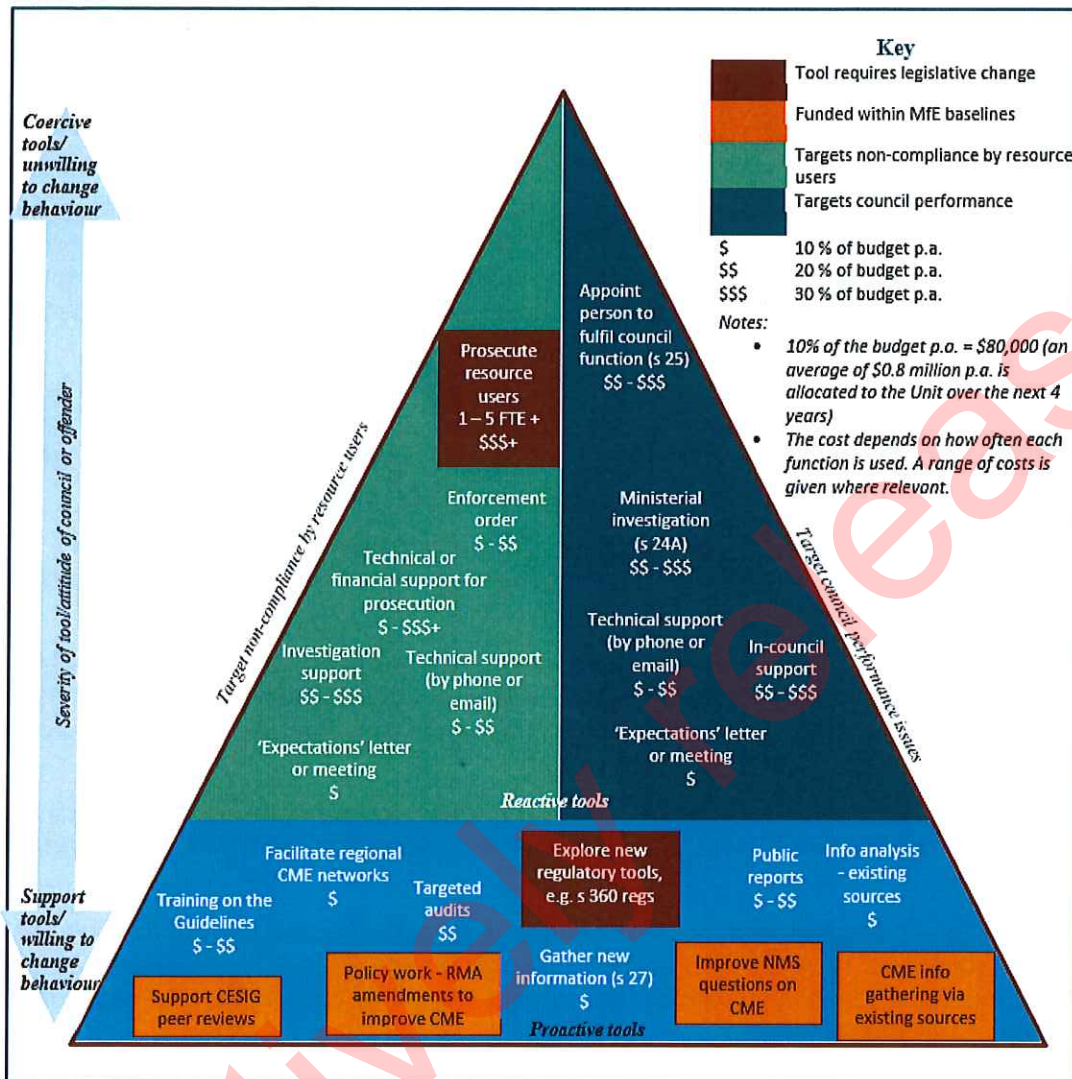
Functions available to the EPA and MfE to improve CME

30. The sections below outline the functions EPA and MfE could carry out to improve CME. This is our initial thinking and we intend to draft a comprehensive intervention strategy (including a list of recommended priority areas) over the next four months, which we will provide to you in December 2018.

There is a range of possible functions the EPA and MfE could carry out

31. In line with our advice in the December briefing (2017-B-04073), the EPA and MfE should take a “spectrum approach” to improving CME by carrying out a range of initiatives targeted to different behaviours. Where a resource user or council is willing to improve but doesn’t have the knowledge or capability to do so, the Units should assist improvements. However, where a resource user or council is unwilling to improve (eg due to lack of political will), the EPA and MfE may need to resort to more coercive measures.
32. Figure 1, which is based on the Braithwaite triangle model, sets out the range of functions the EPA or MfE could exercise to improve CME. These functions either:
 - a. support or coerce improvements;
 - b. target council performance issues or resource user non-compliance; or
 - c. are reactive (respond to issues that have occurred) or are proactive (prevent future issues from occurring).
33. The objective of each function, an example of how it can be used and the key costs benefits and risks are outlined in Appendix A. Details of how each function will be used will be set out in the intervention strategy.
34. Once one function is exercised to respond to an issue, the effectiveness of the function in resolving the issue will need to be assessed, and progressively more coercive functions used if the initial response is ineffective.

Figure 1 – the range of possible functions the EPA and/or MfE could carry out to improve CME



The RMA tools for improving council performance and complex and largely untested

35. The RMA provides you with some functions to address council performance issues. For example, you can investigate a council's failure to fulfil its statutory functions (section 24A) and appoint a person to carry out functions where the council has failed to do so (section 25).
36. The Ministerial intervention powers are intended for where there is a suspected systemic failure by the council to perform its duties, function or powers. As councils' CME responsibilities are not clearly defined in the RMA, there is a risk that councils will challenge the legality of such an intervention.
37. Although your Ministerial intervention powers have a narrow use and are largely untested,² they could be used to improve CME without requiring any legislative changes. There are also non-statutory tools you could use, included in figure 1.

² Section 24A was invoked in the investigations of Environment Canterbury Regional Council and Far North District Council in 2009. Section 25 has never been used.

You would like the EPA and/or MfE to assist councils to carry out enforcement action including prosecutions

38. Any person can take a prosecution under the RMA, but without the ability to warrant enforcement officers to collect evidence or regionally-based incident response staff, it would be difficult for anyone other than the relevant council to succeed. Instead the EPA and/or MfE could provide technical assistance to councils to take prosecutions.
39. There are a range of reasons why councils fail to prosecute in appropriate cases: lack of resources, lack of expertise, conflicts of interest (or lack of political will), lack of evidence or public interest, and failure to meet the six month statutory timeframe.³ We recommend the EPA and/or MfE only support prosecutions where there is sufficient evidence and public interest, and the statutory timeframes have not been exceeded.
40. To make best use of the budget, the EPA and/or MfE could assist prosecutions in the worst case of offending where there is significant environmental effects, high public interest and a resource user with a history of non-compliance. The EPA and/or MfE could work with you to set criteria for when assistance will be provided to councils.
41. As neither the EPA nor MfE have statutory powers to force the council to take a prosecution, both agencies would rely on cooperation from the council to succeed in prosecuting.
42. There is a risk that the EPA and/or MfE's assistance could be seen as a helping hand, rather than a threat, and that councils may rely on the support and not build up their own capability. However, given the EPA and/or MfE would only have budget to assist one or two prosecutions per year, this risk is minor.
43. An alternative to the EPA and/or MfE providing technical assistance is to establish a centralised "fighting fund", which could be used for councils to partly or fully fund taking a prosecution.
44. However, given the significant costs of taking a prosecution, the current funding allocated to the Units would likely be insufficient to establish such a fund. If you wish to pursue this option, we can provide you with further advice, including options for cost-recovery to run this as a cost-neutral function.

MfE should explore new legislative tools for CME

45. Given the limitations outlined above, we recommend MfE consider options to give the EPA and MfE a clearer legislative basis for functions to improve CME. For example, we could consider giving the EPA or MfE power to warrant enforcement officers to enable prosecutions to be taken.
46. We recommend these amendments be considered as part of the narrow RMA amendment bill (for minor amendments, eg, to enable the EPA to warrant enforcement officers) and through scoping the next phase of comprehensive resource management reform expected to begin in 2019 (for more significant changes).

We will need to build information sources to detect issues with councils' CME activities

47. The EPA and MfE will need to build information sources (including receipt of public complaints on CME) and carry out analysis to understand how well councils are carrying out their CME responsibilities. This will enable issues to be detected and responded to.

³ Note the narrow RMA amendment bill proposal to extend this period from six to 12 months.

48. MfE collects some information about council CME activities, for example through the National Monitoring System (NMS)⁴. We also receive information on potential CME issues from the public through our Resource Management Information service (RM Info⁵) and Ministerial correspondence. Some councils may proactively contact the EPA or MfE for assistance to resolve an issue.
49. These sources give us some understanding of trends and issues with councils' CME activities. However, current sources will not be sufficiently detailed or comprehensive to give a full picture of council performance on CME.
50. MfE is working with the regional and unitary councils' Compliance and Enforcement Special Interest Group (CESIG) to identify metrics and gather data that more accurately measures councils' CME performance, which will inform a review of the NMS. This information could assist the EPA and MfE to detect potential issues.
51. To enable more proactive detection and response to issues, the EPA and/or MfE could have a proactive data gathering role and carry out targeted audits of council CME activities in respect of priority areas (e.g. freshwater quality) or activities with a significant environmental impact.

There are a range of proactive options for preventing future CME issues

52. If the EPA and/or MfE carries out the reactive functions outlined in figure 1, this could result in improvements in specific cases and may encourage other resource users and councils to improve practice.
53. However, for wider systemic improvements and to address council capability deficits, we recommend the EPA and/or MfE also carry out proactive support functions. MfE is already supporting CESIG "peer reviews", in which unitary and regional councils review each other's CME processes and draft reports with recommended improvements.
54. The EPA and/or MfE could also run training to implement the Guidelines. There are few existing training opportunities on CME, and no training programmes aimed at upskilling enforcement decision-makers and elected representatives. The one RMA course that exists for CME frontline staff is run voluntarily by Waikato Regional Council. The EPA and/or MfE could partner with councils to run nation-wide training, building on the content in the Guidelines.
55. Another option is for the EPA and/or MfE to facilitate regional CME networks to enable council CME staff to assist each other to upskill. Networks are set up already in some regions. The EPA and/or MfE could set up and support similar networks in other regions.

The functions the EPA and MfE use to improve CME are limited by financial constraints

56. With an operating budget of \$3.1 million over the next four years, not all of the functions outlined in figure 1 can be carried out. Further neither the EPA nor MfE can recover the costs of RMA CME activities from resource users or councils, except in limited circumstances.⁶
57. The Vote Environment Budget 19 bid will seek additional funds for compliance functions within MfE and EPA, including this area, in order to be able to deliver more monitoring and

⁴ The NMS collects information annually from councils on numbers and types of enforcement actions taken, CME resourcing, and resource consent monitoring.

⁵ RM Info is a programme run by the Resource Management Directorate at MfE where complaints and queries from members of the public are responded to by email or phone.

⁶ Section 25(d) of the RMA allows you to recover the costs of appointing a person to fulfil a council's statutory functions from the council.

enforcement actions. Alternatively, you could submit another budget bid requesting additional funding.

58. With limited resources, choices will need to be made about which functions the EPA and MfE carry out to improve CME, and how the functions are phased over time. Table 1 provides an example of what functions could be carried each year within the \$3.1 million budget.

Table 1 – example of phasing of work over time and functions split between the EPA and MfE

Financial year and budget <i>* If an appropriate case arises</i>	Year 1 (18/19) functions <i>Budget: \$0.58 mill</i>	Year 2 (19/20) functions <i>Budget: \$0.83 mill</i> <i>Scale up all functions</i>	Year 3 & 4 (20/21 – 21/22) functions <i>Budget: \$0.83 mill p.a.</i> <i>Scale up all functions</i>
Environmental Protection Authority	<ul style="list-style-type: none"> Initiate technical support for 1 prosecution* 	Additional function: investigation support – 2 sites*	Additional functions: targeted audits and 1 enforcement order*
Ministry for the Environment	<ul style="list-style-type: none"> Information gathering and analysis 1 Ministerial investigation* Technical support (by phone or email) Training on the Guidelines 	Additional functions: in-council support – 2 councils* and public reports	Additional function: regional CME networks

The Units' location (the EPA and/or MfE)

59. The functions outlined above could be carried out by either the EPA, MfE or a combination of both agencies.

60. Table 2 below outlines which agency is better suited to carrying out each function. This takes into account each agencies':

- a. statutory powers (or ability to be delegated powers)
- b. other (non-RMA CME) functions
- c. capability and expertise
- d. ability to act independently of political or other improper influence when taking direct enforcement action to respond to site-based issues⁷
- e. and ability to carry out the functions cost-effectively and efficiently.

⁷ The Solicitor-General's Prosecution Guidelines describe independence of prosecutors as the "central tenet of a prosecution under the rule of law in a democratic society".

Table 2 – Recommended split of roles between EPA and MfE

Environmental Protection Authority	Ministry for the Environment
All functions which target non-compliance by resource users	All functions which target non-compliance by resource users
Proactive function: Targeted audits	Proactive functions: Info gathering and analysis, public reporting, facilitate regional CME networks, training on the Guidelines
	All existing MfE functions

61. If all functions were carried out by MfE, with existing data, policy and RMA expertise and capacity, the Unit would be able to be set up quickly. However MfE would need to recruit for investigation and enforcement expertise, and as the organisation is a core agency, there may be less perceived independence.
62. If all functions were carried by the EPA, it would take longer to set up, due to limited existing data and policy expertise. However the EPA has some existing enforcement and investigation expertise and is better able to take direct enforcement action. It may also have greater perceived independence as a Crown entity.
63. As neither agency is well-placed to carry out all of the functions outlined above, we recommend the work be split across both agencies.

We recommend the Compliance Oversight Unit be established at MfE and an Enforcement Unit be established at the EPA

64. We recommend the Compliance Oversight Unit is established within MfE to take on functions which target council performance issues, as well as information gathering and analysis and any training, reporting or networking functions (the bottom and right sides of triangle). These functions fit well with MfE's existing capabilities, and align with other MfE work programmes, such as freshwater quality.
65. We recommend an "Enforcement Unit" is established within the EPA to take on functions which target resource user non-compliance and a targeted audit role. EPA's greater perceived independence and existing enforcement capability mean that it is well-suited to these functions.
66. While the Enforcement Unit will need to maintain independence in making enforcement decisions, both agencies will need to actively share information to inform their approach.
67. Over the next four months, we will work with the EPA to determine when and how the Enforcement Unit will take enforcement action and how budget will be allocated to these functions. This will include a criteria for determining when to support councils to take prosecutions.
68. Once both units are fully operative in January 2019, we intend to report to you quarterly on progress.

Consultation and Collaboration

69. This briefing was drafted in consultation with the EPA. This briefing incorporates the views of a number of councils and stakeholders, such as Forest and Bird, Meredith Connell and the Compliance and Enforcement Special Interest Group (CESIG).

70. We recommend iwi and Māori groups, key NGOs (such as Forest and Bird and the Environmental Defence Society), and CESIG be engaged over the next four months as we further develop the units' approach.

Risks and mitigations

71. Risks and mitigations are identified throughout the briefing.

Legal issues

72. There are no legal issues associated with the matters discussed in this briefing.

Financial, regulatory and legislative implications

73. The Unit is currently funded for \$3.1 million over the next four years. Additional functions could be sought through another budget bid or capability bid, as explained above.

Next Steps

74. If you agree with our recommendation to establish the Compliance Oversight Unit within MfE and establish the Enforcement Unit within the EPA, we will work with the EPA, NGOs and iwi over the next four months to further determine how the Units will work together and how the budget will be split between agencies. We will provide you with further advice in December 2018.

75. The EPA will consider the skills and expertise needed to operate the Enforcement Unit, which could include recruiting a Crown prosecutor or former regional council prosecutor to lead the Unit.

76. If you wish to establish a centralised "fighting fund" to provide financial support for councils to take RMA prosecutions, we can provide further advice in December 2018.

77. MfE will explore options for giving the EPA and MfE new statutory functions to improve CME, including minor amendments through the narrow RMA bill and more significant changes through scoping of comprehensive resource management reform.

Appendix A – Cost, benefits and risks of each function

Function and <i>objective</i> of function	Example of use	Costs, benefits and risks
Functions for responding to non-compliance by resource-users (to be carried out by the EPA Enforcement Unit)		
<p>Technical support by phone or email (non-statutory tool)</p> <p><i>To ensure a non-compliant activity stops or is prevented from occurring</i></p>	<p>A council with limited CME expertise is uncertain about what enforcement action to take in response to non-compliance. The Enforcement Unit assists the council with the enforcement decision-making process.</p>	<p>Helps to supplement CME capability and expertise deficits.</p> <p>No assurance that the issue will be resolved effectively – council may ignore advice.</p> <p>Effectiveness limited to the specific council and issue being assisted (i.e. likely to have limited benefit to other councils).</p>
<p>Expectations or ‘please explain’ phone call, meeting or letter (non-statutory tool)</p> <p><i>To discuss an issue with a council and recommend a course of action to resolve it, OR seek an explanation from the council for an issue</i></p>	<p>A person calls the Enforcement Unit alleging the council has failed to investigate a significant discharge from a stormwater drain into an estuary. The Unit contacts the council to seek an explanation and then meets with the council to agree a course of action to resolve the issue.</p>	<p>Likely to be effective in addressing the specific issue, if council is cooperative.</p> <p>May also prevent future issues in that council from occurring.</p> <p>Risk that the council will be uncooperative and ignore direction or agreed course of action.</p>
<p>Investigation support (non-statutory tool)</p> <p><i>To assist a council’s response to an issue by providing additional capability and expertise</i></p>	<p>The Enforcement Unit supports a council to investigate an illegal discharge where the council has insufficient capacity and expertise to carry out the investigation</p>	<p>Supplements CME capability and expertise deficits and ensure that an issue is addressed effectively.</p> <p>Likely to be effective in addressing the specific issue.</p> <p>Effectiveness may be limited to the specific council and issue.</p>
<p>Apply for an enforcement order (s 314)</p> <p><i>To ensure a non-compliant activity stops or is prevented from occurring</i></p>	<p>A member of the public contacts the Enforcement Oversight Unit about the intention of a landowner to clear indigenous vegetation, in breach of a plan rule. The person has contacted the council but the council refuses to take action. The Enforcement Unit discussed with council but council is unwilling to take action. The Enforcement Unit applies for an interim enforcement order to prevent the clearance.</p>	<p>Likely to be effective in addressing the specific issue.</p> <p>May have wider benefits in increasing council enforcement if the Unit communicates that it took the enforcement action due to the council failing to take effective enforcement.</p> <p>Risk that councils will rely on the Unit to make applications for enforcement orders, or if the Unit does not follow up on an issue brought to its attention that a council could argue that central government did not address as a priority so it also saw no need to address.</p>
<p>Provide technical or financial assistance to enable a council to prosecute (the assistance is a non-statutory tool)</p> <p><i>To ensure prosecutions are taken in appropriate circumstances and resource users are held accountable for RMA breaches</i></p>	<p>A unitary authority seeks assistance from the Enforcement Unit to prosecute a person for burning a large pile of tyres resulting in a toxic discharge to air. The council has insufficient resources or expertise to take the prosecution without assistance.</p> <p>The Enforcement Unit sends staff with prosecution experience to assist the council with the prosecution.</p>	<p>Likely to be effective in addressing the specific issue.</p> <p>May have wider benefits in improving numbers of prosecutions if communicated as the Unit intervening due to the council failing to take effective action.</p> <p>Risk that councils will rely on the Unit to support prosecutions, and not take action to build up their own capability and expertise.</p>

Function and <i>objective</i> of function	Example of use	Costs, benefits and risks
<p>Prosecute resource users directly</p> <p><i>As above. Additional purpose: to admonish councils which fail to take prosecutions in appropriate circumstances</i></p>	Same as above, except the Enforcement Unit gathers the evidence directly and takes the prosecution.	<p>No statutory role for EPA or MfE to take prosecutions. The opportunities where either agency could succeed in taking a prosecution without powers to gather evidence are slim.</p> <p>Legislative amendment required to give EPA or MfE a prosecution role.</p>
Functions for responding to council performance issues (to be carried out by the MfE Compliance Oversight Unit)		
<p>In-council support (non-statutory)</p> <p><i>To assist councils to improve CME practices</i></p>	The Compliance Oversight Unit, upon a council's request, works with the council to review its inspection practices and assist the council to improve its approach.	<p>Useful where a council is willing to make improvements, but has insufficient expertise or capability to do this.</p> <p>Resource and time intensive function.</p>
Expectations or 'please explain' phone call, meeting or letter (non-statutory tool)	See explanation above. Function could be used by the Compliance Oversight Unit to, for example, communicate expectations that a council will take enforcement action in response to significant non-compliance.	
Technical support by phone or email (non-statutory tool)	See explanation above	
<p>Investigate a councils' failure to carry out statutory functions and make recommendations (s 24A)</p> <p><i>To determine the causes of an issue and make recommendations for improvements in accordance (e.g. with the standard set out in the Guidelines.)</i></p> <p><i>Wider objective: to provide a credible threat of intervention.</i></p>	A council has taken no enforcement action in response to a number of significant breaches of the RMA.	<p>Tool could be used where there is a range of CME issues.</p> <p>May have wider benefits (beyond the council being investigated) in improving CME due to threat of intervention.</p> <p>Unlikely to be effective in itself – the Unit would need to make recommendations and use other tools to ensure the recommendations are taken up by the council.</p>
<p>Appoint a person to fulfil any of the functions of a council where a council has failed to fulfil its functions (s 25)⁸</p> <p><i>To admonish the council for failing to fulfil its functions and to direct improvements to be made.</i></p> <p><i>Wider objective: to provide a credible threat of intervention.</i></p>	A section 24A investigation reveals poor enforcement decision-making practices. The Compliance Oversight Unit advises the Minister, who appoints a person to work within the council to develop a robust compliance strategy.	Wider deterrent effect
<p>Prosecute council</p> <p><i>To punish the council for failing to carry out their statutory duties, and deter other councils from doing the same</i></p>	Systemic and significant failure by a council to carry out its CME, consenting and planning responsibilities.	<p>Function should only be in the worst cases where there are significant and systemic issues.</p> <p>Significant risk of damage to relationships between central and local government.</p>

⁸ Note that the RMA prescribes the process through which the appointment must be made, and matters that must be satisfied before this decision is made.