



Compliance, enforcement and monitoring

1.2



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Introduction

The Resource Management Act 1991 (usually called the RMA) is the main piece of legislation that sets out how we should manage our environment. It's based on the idea of the sustainable management of our resources, and it encourages us (as communities and as individuals) to plan for the future of our environment.

The RMA means that councils set rules and requirements to manage activities ranging from building houses, clearing vegetation, moving earth, to taking water from a stream. The purpose is to ensure activities won't harm our neighbours or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

Council rules for using resources

The RMA sets up a framework for making rules about using resources. These are in:

- [district](#) and [regional plans](#) made by councils, and
- [national environmental standards](#) set by central government.

Each council manages a slightly different environment, and our environmental issues and challenges vary between different regions and districts.

This means that councils can sometimes have quite different rules, and different strategies for enforcing those rules.

About this guide

This guide is the second in a series of 13 guides called An Everyday Guide to the Resource Management Act (see more details about the series below).

It explains how and when councils, and in some instances the [Environmental Protection Authority \(EPA\)](#), carry out [compliance](#), [monitoring](#) and [enforcement](#) (compliance, monitoring and enforcement).

As a member of the public, you may find the guide helpful for:

- assurance that a council is effectively carrying out compliance, monitoring and enforcement and upholding its policies and plans, and ensuring the rules are clearly understood

- understanding how a council is likely to monitor compliance, including how often, how much it will cost and who will pay
- understanding how a council may address non-compliance, including the process for deciding on [enforcement](#).

The guide has a glossary of RMA terms at the end. Words defined in the glossary are coloured [light green](#).

About the everyday guides

This guide is one in a series of 13 called An Everyday Guide to the RMA. The series is intended to help people work with their councils. If you're dealing with the Environmental Protection Authority (EPA), a board of inquiry, or the Environment Court (see the glossary to learn more about these), you might need more technical advice from the EPA (www.epa.govt.nz) or the Environment Court (environmentcourt.govt.nz).

For more information about specific parts of the RMA process, see the full list of guides on our website: www.mfe.govt.nz/rma/processes-and-how-get-involved/everyday-guide-rma.

Your responsibilities under the RMA

You must comply with the RMA and consent conditions

If you want to undertake an activity that is controlled by the RMA, you may need to get a [resource consent](#). If you have a consent, you must comply with any and all conditions imposed in that consent.

Even if you don't need a resource consent, there will usually be rules or standards that you have to comply with to make sure your activity is legal.

If you don't, you could be fined or prosecuted

It is an offence to break rules under the RMA unless you have a consent that allows you to do so. If you break the rules without having the proper consents, or you break the conditions imposed in your consent, you might be prosecuted and could receive a fine or even be sentenced to a term of imprisonment.

Everyone has to comply

The obligation to comply with rules under the RMA applies to everyone – that includes individuals, companies and businesses, trusts, clubs, and societies, and even central and local government entities and agencies.

Understanding RMA liability

Even if you didn't mean to breach the rules, you may still be held accountable.

In addition, if someone working for you (for example, an employee or a contractor) breaches the rules, you might be held accountable as if you had breached the rules yourself.

Because of this, it's important to do your best to find out about rules that might apply to you, and ensure anyone working for you understands them too.

About compliance, monitoring and enforcement

Compliance, monitoring and enforcement are activities that ensure communities comply with requirements in the RMA, national standards or regulations, council plans or [resource consents](#).

The three main activities of compliance, monitoring and enforcement are set out below.

Promoting compliance

Compliance is where people are properly following RMA rules and resource consent conditions. If we make good rules, and those rules are followed, the environment is better protected and our communities are cleaner and safer for people, animals and plants.

Councils promote compliance to ensure their communities understand the requirements in the RMA, standards or regulations, and council policies and plans. This may include engagement, education, advertisements, and on-site advice.

A key element in gaining compliance, and therefore better outcomes for our communities, is enabling people to be the 'eyes and ears' for councils. By educating the public, and working closely with iwi and community groups, councils can often benefit from a crucial information source to support their compliance, monitoring and enforcement, roles.

Monitoring

Monitoring is when councils check if a situation complies with the rules. This includes site inspections, reviewing consent conditions, plans and reports, responding to complaints, and investigating whether there is a breach that requires further action.

Monitoring ensures councils take appropriate action if needed. It also enables early detection, and prevents damage to the environment.

Most councils take a risk-based approach – prioritising activities with a higher risk of non-compliance, or where non-compliance poses a more severe risk of adverse effects.

For more detail, see [Types of monitoring](#).

Enforcement

Enforcement is the actions councils take when people are not complying with the RMA, a resource consent, a rule in a district or regional plan, or various types of regulation.

Councils can use a range of enforcement tools, tailoring their response to the offence.

For more detail, see [Types of enforcement action](#).

Where you can find out more

For information on how councils carry out compliance, monitoring and enforcement, see [Best practice guidelines to compliance, monitoring and enforcement under the Resource Management Act 1991](#).

It is considered best practice for councils to publish a compliance policy or strategy document. These should help clarify how the council manages its compliance, monitoring and enforcement responsibilities, prioritises compliance work, and decides when to take formal enforcement action.

To find out if your council has a policy or strategy in place, contact it directly.

Who pays for compliance, monitoring and enforcement

Compliance with resource consents

Councils may pass on to the consent holder the actual and reasonable costs of checking for compliance with resource consents. Sometimes, your council may need you to pay some costs in a fixed fee or deposit before you begin the activity. This may include, but is not limited to, the cost of time spent on:

- site inspections or reviewing and/or assessing information submitted about consent compliance, including any travel time, and health and safety tasks for an inspection
- preparing and sending correspondence about compliance with a consent
- assessing non-compliance or preparing notices
- administration such as data entry or records maintenance.

Talk to your local council about any charges or fees.

Compliance for permitted activities

Even if you don't need a resource consent for your activity, you may face compliance checks or inspections on a [permitted activity](#). Sometimes you can be charged for these. If you are unsure whether you might be liable for these costs, check with your local or regional council.

Costs for enforcement

If the council takes enforcement action, you may have to pay for its time and resources. This could include the [enforcement officer's](#) time, legal fees and technical expert fees.

If the enforcement escalates to court and you are found guilty or liable in a prosecution or other enforcement, the court may direct you to pay all or part of the costs of the council's investigation.

Cost rates

The council publishes the hourly rate you may have to pay for compliance work in its annual plan documents.

For more information, contact your council.

Types of monitoring

Resource consent monitoring

Every council is required to monitor the activity that a resource consent allows. This involves checking:

- when consents have been 'given effect to' (the consented activity is under way)
- compliance with consent decisions and conditions
- the effectiveness of consent conditions
- the impact of consented activities on the environment.

The type and frequency of monitoring will vary. Some consents require only a minimal level, while others require regular site visits.

Monitoring permitted activities

Councils may check on [permitted activities](#) to monitor compliance with, and assess the effectiveness of, plan provisions.

Permitted activities in plans may include conditions. In some cases, the conditions can be extensive, and non-compliance can seriously risk damaging the environment.

Factors that influence a council's approach include:

- access to resources – often these may be limited, given the RMA does not generally provide for cost recovery for monitoring permitted activities
- local or emerging issues, or those seen as most important to the community
- the type of permitted activities to monitor, as plans vary between councils. For example, a certain activity may be permitted in some regions, but controlled elsewhere, and therefore require consent.

Responding to community concerns

Councils frequently receive notifications of incidents (including complaints), which they have to investigate. This is also a form of compliance monitoring. When notified of potential non-compliance, they need to assess whether, in fact, it is non-compliance.

Notifications may relate to:

- activities that have resource consent (where conditions may not be met, or the activity or effects may be outside the scope of the consent)
- permitted activities (which may not meet the conditions)
- an environmental incident (for example, an oil spill in a harbour, paint in a stream).

When a council can enter your property and your rights

Enforcement officers have a number of powers to enter property and take action, including to take samples, undertake [emergency works](#) actions or issue [abatement notices](#) or [infringement notices](#).

Enforcement officers must carry warrant cards, which list their powers and responsibilities.

Entering private property

Enforcement officers have the power to enter and inspect private property, at any reasonable time, for the purpose of checking for non-compliance. If an officer exercises their power to enter your land and undertake an inspection, you must allow them to do their inspection tasks. It is an offence to obstruct an enforcement officer.

Sampling, measurements, photographs and assistance

As part of these inspections, enforcement officers have the right to take:

- samples of soil, water, air or organic matter (including vegetation or animal remains)
- samples of any substance where they have reasonable cause to believe that substance is a contaminant of any of these
- any relevant measurements or photographs, and to record their observations. This may include making audio or visual recordings of their inspection and/or field interviews.

Enforcement officers have the power to bring special assistance with them if needed, such as a scientist, surveyor or additional people for health and safety reasons.

What council officers have to do when they enter your property

When an enforcement officer enters your property, they must show you their **warrant of appointment**, which includes written authorisation for the council or the EPA to use their powers.

If they come on to a property and find no one there to show their warrant to, they are allowed to go ahead with their inspection. However, when they finish they must leave a written notice in a prominent place (for example, in the letterbox or on the front door) giving the time and date of the inspection and the name of the officer leading it. It is considered good practice to also include the purpose of the inspection on the notice. Often officers will leave this notice even when there was someone there to show their warrant to.

What enforcement officers can't do

An enforcement officer can enter your property, except in the following circumstances.

- If they need to come into the house to complete their inspection then they have to get your permission and conduct the inspection at a time agreed with you.
- If they cannot get permission to enter a house, they may apply to the court for a search warrant to enable them to enter, but they will have to justify their reasons for doing so to the court.¹
- If they have reasonable grounds to believe an offence has been committed, a search warrant or informed consent will be required to return to that property to gather any additional information.
- If they do get a search warrant, they must bring a police officer with them to supervise the search.
- If an enforcement officer enters your property, they must do so at a reasonable time.

¹ It is important to note this only applies to houses that are occupied as a residence. An enforcement officer may enter houses that are vacant or under construction as part of their normal inspection.

Health and safety inspections

You cannot prevent an enforcement officer from conducting an inspection of your property on health and safety grounds. Most enforcement officers receive comprehensive health and safety training and can manage themselves provided they are properly informed about hazards.

You have a responsibility to ensure the enforcement officers are informed of any health and safety hazards on your property. If you need to keep working while the officers are doing their inspection, you must work safely around them and not put them at risk.

If your site has significant hazards and you believe the officers need to receive a formal safety induction before their inspection, you should explain this to them and offer an induction. However, if there is an urgent issue that needs to be inspected immediately, enforcement officers have the right to skip these processes and go straight into the inspection.

Answering questions

Name, address and date of birth

If an enforcement officer reasonably suspects you have been involved in a breach of the RMA, then they have the power to require you to tell them your full legal name, your residential address and your date of birth. If they ask you for these details, you must provide them. It is an offence to refuse to provide this information.

Your client or employer

If you are an employee contractor working for someone else, an enforcement officer also has the power to require you to provide the name and address (and, if applicable, date of birth) of the person or company you are doing the work for. If you know these details, you must provide them. It is an offence to refuse provide this information if you know it.

You must tell the truth

You are not required to provide further information if you do not want to. You are entitled to refuse to answer any further questions. However, if you do choose to answer any further questions from an enforcement officer, you must answer them truthfully. It is an offence to deliberately deceive or mislead an enforcement officer.

Formal interviews

If you are suspected to be responsible for an offence, or if you are a witness to an incident being investigated, you may be asked to participate in a formal interview.

If you are invited to participate in a formal interview, you have the right to refuse. If you do choose to participate, you should be aware of the following:

- the purpose of an evidential interview is to discover the truth about a case or incident under investigation
- as described above, you must provide your name, address and date of birth, the same information about your employer and/or client (if known), and you must tell the truth
- the council does not have the power to arrest or detain you. You are entitled to end the interview and leave at any time
- you have the right to have your lawyer present if you wish
- you have the right to pause the interview to speak to your lawyer or take legal advice
- formal interviews are usually recorded in an audio/visual format. You have the right to receive a copy of the recording and any transcript.

Enforcement decisions and tools

When enforcement action can be taken

Enforcement action may be taken if someone:

- breaches a rule in a plan, national environmental standard or regulations
- breaches the conditions of a resource consent
- breaches the requirements of an abatement notice, enforcement order or other compliance notice
- uses water, air, the coastal marine area or the beds of waterbodies in a manner not authorised by a plan or consent.

Who can take enforcement action

Councils generally take action on non-compliance, but private individuals or organisations can also apply for an [enforcement order](#) and make a prosecution under the RMA. However, only enforcement officers (authorised by a council or the [Environmental Protection Authority](#)) can issue an infringement or [abatement notice](#).

The [Environmental Protection Authority](#) (EPA) also has enforcement powers under the RMA. The EPA can:

- hold its own RMA investigations if a council is not already involved in an active investigation
- help councils with investigations in progress, with the agreement of the council
- intervene in RMA cases and take the lead on an investigation and enforcement action.

Although councils are mainly responsible for enforcement, everyone can play a part. You can help by keeping an eye on things, and letting your council know if something doesn't seem right, or even applying to the [Environment Court](#) for an enforcement order. If you are thinking of applying for an [enforcement order](#), you should seek legal advice.

How enforcement decisions are made

When a council detects non-compliance with the RMA, it can choose to address this informally (for example, through education or a verbal warning) or take enforcement action, or a mixture of both.

Councils don't take enforcement action every time they get a complaint or find out someone has been doing something to harm the environment.

When deciding how to respond, councils may take into account:

- the actual and potential effects of the non-compliance on the environment, how sensitive the environment is and whether it is of particular significance to iwi
- the nature of the offending, including whether the person had a history of offending, and any actions to remedy or mitigate the effects
- legal considerations, including how the unlawful activity aligns with the purposes and principles of the RMA, and for prosecution, the level of alignment with the Solicitor-General's Prosecution Guidelines
- the desired outcomes, including the level of specific and general deterrence required, and whether the enforcement action is the most cost-effective method.

Types of enforcement action

There are a range of enforcement options, tailored to the type and severity of offending. The RMA provides enforcement tools that are either:

- punitive – to deter or punish the offender
- directive – to require someone to stop an activity or take an action.

The table on the next page lists the enforcement actions set out in the RMA.

Table 1: Enforcement actions for responding to RMA non-compliance

Enforcement action	Description	RMA section	Penalty
Verbal or written direction	Advice that a breach of the RMA has occurred (or may occur) and that the offending party must take or stop a particular action.	Non-statutory tool	None
Formal warning letter	Informs a person/company that they have breached the RMA. It forms part of the history of non-compliance, which can be used to inform future enforcement, and as evidence if it goes to court.	Non-statutory tool	None
Water shortage direction	Where there is a “serious temporary shortage of water”, regional and unitary councils may issue a direction to apportion, restrict or suspend the “taking, use, damming, or diversion of water” or “the discharge of any contaminant into water”.	Section 329	Breach of the direction is a prosecutable offence under section 338(1) of the RMA.
Abatement notice	A formal written direction requiring a person to take or stop certain actions within a set time. Generally used when non-compliance has been detected and the offender needs to “avoid, remedy or mitigate” the damage to the environment.	Sections 322–325B	Breach of the notice is a prosecutable offence under section 338(1) of the RMA.
Infringement notice	A written notice (and fee), which informs a person they have committed an offence under the RMA. No criminal convictions can be imposed.	Sections 343A–343D; and regulations	Fees currently range between \$300–\$1000, as set out in Schedule 1 of the Resource Management (Infringement Offences) Regulations 1999 Fees can range up to \$4000, as set out in regulations.
Enforcement order	An order by the Environment Court requiring a person to take or stop certain actions within a set time, where the court believes the activity breaches, or is likely to breach, the RMA. Can be made to the Environment Court by any person.	Sections 314–319 and 321	The Environment Court may direct the offender to pay costs to “avoid, remedy or mitigate” the damage to the environment. Breach of the order is a prosecutable offence under section 338(1) of the RMA.
Interim enforcement order	Similar to an enforcement order and used when there is an urgent need. Applications are usually dealt with by the Environment Court	Section 320 (and 314–319 and 321 on enforcement orders)	The Environment Court may direct the offender to pay costs to ‘avoid, remedy or mitigate’ the damage to the environment.

Enforcement action	Description	RMA section	Penalty
	without a hearing or serving notice, although a hearing is scheduled. A council may obtain an order in 2–3 days if there is evidence (by affidavit) and a judge is available.		
Excessive noise direction	Issued if an enforcement officer believes the noise is excessive. It directs the occupier, or anyone who appears responsible for the noise, to immediately reduce it to a reasonable level.	Sections 326–328	The excessive noise direction does not carry a penalty, but breach of the direction is a prosecutable offence under 338(2)(a) of the RMA.
Prosecution	Establishes the guilt or innocence of an accused party and, if necessary, results in a sanction by the courts. Administered within the criminal jurisdiction and offences carry criminal penalties. RMA prosecutions are considered in the district court by judges who also hold office as Environment Court judges. ² Charges must be filed in the court within 12 months of “the time when the contravention giving rise to the document first becomes known, or should have become known”. ³	Section 338. Other sections are also relevant.	Depending on which RMA section is breached, the court can impose varied maximum fine levels on conviction. For individuals, most offences have penalties of a fine not exceeding \$300,000 or a sentence of imprisonment not exceeding two years. For companies and other entities, most offences have a maximum penalty of a fine not exceeding \$600,000.

MORE INFORMATION

- [Best practice guidelines for compliance, monitoring and enforcement under the Resource Management Act 1991](#)

Other tools

Emergency powers and applying for an Environment Court declaration (as detailed below) are two options that are not strictly enforcement tools, but it is useful to be aware of them.

² Resource Management Act 1991, Section 309(3).

³ Resource Management Act 1991, Section 338(4).

Emergency works

In an emergency, councils and some other authorities can do work (or require someone else to) to prevent, remove the cause of, or fix any adverse effect arising from an activity – including adverse effects that are likely to happen. Council officers might go on to a site and direct someone to do something to help the situation, or they may even take over machinery themselves to fix or improve the problem.

Under the RMA, emergencies include sudden events causing or likely to cause loss of life, injury or serious damage to property. Other situations include when something must be done immediately to stop damage to the environment, such as the discharge of a contaminant (for example, oil), when the person responsible is unable or unwilling to fix it immediately.

When a council or other authority needs to use these emergency powers, it can act without first obtaining resource consent (if it would normally be required). However, it must apply for resource consent later, within a set time.

The council can recover the costs of emergency works on private land from the person who caused the problem. If they are not recovered within 20 working days, the council can seek an enforcement order for the costs.

Application for a declaration

A [declaration](#) is a statement by the Environment Court clarifying legal matters. It might be issued before an abatement notice or enforcement order to help a council draft these orders.

A declaration can clarify:

- whether an activity goes against the RMA, a rule in a district or regional plan, a condition of resource consent or a designation
- whether an activity is permitted, controlled, discretionary, non-complying or prohibited (the 'activity status')
- whether an activity breaches the duty to avoid unreasonable noise, or the duty to avoid, remedy or mitigate adverse effects on the environment
- any other matter relating to enforcement of the RMA.

Any person can apply to the Environment Court for a declaration. If you are considering applying, seek legal advice and be aware that if you are unsuccessful, the Environment Court can award costs against you.

Glossary

The purpose of this glossary is to help you understand the meaning of terms used in this guide. Some of these terms have specific legislative definitions in section 2 of the RMA.

Abatement notice	A request for compliance with the RMA within a specified time. Only councils and the EPA can issue these notices, which are used to get someone to stop or to start doing something.
Compliance	Where people are properly following RMA rules and resource consent conditions.
Declaration	A statement by the Environment Court clarifying legal matters. It might be issued before an abatement notice or enforcement order, to help a council draft these orders.
District plan	A plan prepared by city or district councils to help them carry out their functions under the RMA.
Emergency works	Works that councils and some other authorities can do (or require someone else to) to prevent, remove the cause of, or fix any adverse effect arising from an activity – including adverse effects that are likely to happen.
Enforcement	Actions councils take when people are not complying with the RMA, a resource consent or a rule in a district or regional plan, or other regulation.
Enforcement officer	Usually appointed by local authorities and supplied with a warrant stating the functions and powers they are authorised to carry out.
Enforcement order	A way of getting someone to comply with the RMA. It differs from an abatement notice in that anybody (not just the council or the EPA) can apply for an enforcement order against somebody else. These are issued by the Environment Court rather than the council.
Environmental Protection Authority (EPA)	Receives and processes applications for proposals of national significance under the RMA, and can have a role in RMA compliance and enforcement.

Environment Court	A specialist court where people can appeal decisions made by councils on a policy statement or plan, or on a resource consent application; or where they can apply for an enforcement order or seek a declaration.
Excessive noise direction	Issued by a council to get people to reduce excessive noise to a reasonable level.
Infringement notice	A written notice accompanied by a fee, which informs a person that an offence has been committed under the RMA.
Monitoring	When councils check if a situation complies with the rules or resource consent conditions.
National environmental standard (NES)	Regulations that prescribe technical and non-technical standards, methods or other requirements for land use and subdivision, use of the coastal marine area and beds of lakes and rivers, water take and use, discharges or noise. Each regional, city or district council must enforce the same standard. In some circumstances where specified in the NES, councils can impose stricter or more lenient standards.
Permitted activity	Activity that is allowed to occur without the need for a resource consent.
Regional plan	Prepared by regional councils to help them manage the resources they are responsible for.
Resource consent	Permission from the local council for an activity that might affect the environment and that isn't allowed 'as of right' under the district or regional plan.
Warrant of appointment	A warrant issued to enforcement officers empowering them to use the powers of entry, sampling, search and enforcement action set out in the Act.
Water shortage direction	A regional council direction setting out additional water restrictions that are tighter than usual (for example, during a drought).
Working day	Any day except for a weekend day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday and Labour Day, and those days between (and including) 20 December and 10 January. Note: If Waitangi Day or Anzac Day falls on a weekend day, the following Monday is excluded.