



## RESOURCE MANAGEMENT AMENDMENT ACT 2009

# Fact Sheet 9: Changes to Enforcement

This is one of a series of fact sheets giving an overview of the amendments to improve the Resource Management Act (RMA). This fact sheet provides an overview of the amendments made to improve enforcement.

### WHAT WERE THE ISSUES?

The amendments address concerns that:

- there was limited incentive to comply with the RMA and council plans when the financial gains from non-compliance could be higher than the penalties imposed
- review or cancellation of resource consents was not provided for as a deterrent in prosecutions
- the RMA binds the Crown, but enforcement action could not be taken against Crown organisations. The Crown was treated differently from companies or private individuals, and there was little deterrence for non-compliance
- enforcement action was hampered by minor technical matters such as the ability to identify offenders and the limited means by which documents could be served.

### HOW HAS THE RMA BEEN IMPROVED?

#### Raising maximum fines for offences

Section 339(1) now provides for higher fines for offences under sections 338(1), 338(1A) and 338(1B).

There is also a different level of fine for natural persons (ie, people) and persons other than a natural person such as the Crown, and corporate and unincorporated bodies.

The maximum fine for people has been increased from \$200,000 to \$300,000 and the two year maximum term of imprisonment remains. The maximum fine for other persons is \$600,000.

#### Power of the District Court to require reviews of resource consents

Where an offence has been committed that involves the breach of a resource consent, the District Court now has the power under section 339 to order a council to review a resource consent by directing it to serve notice under section 128(2) to review the consent conditions.

Section 131 requires a council to have regard to any reasons given by the Court in making the order when directed by the Court to review a condition.

Section 132 enables a council to cancel a resource consent where the Court has ordered a review of resource conditions and the council decides there are significant adverse effects on the environment resulting from the exercise of the consent. A council can also recover from the consent holder any costs associated with a review of consent conditions ordered by the Court.

#### Enabling enforcement action to be taken against the Crown

Section 4 now enables enforcement action to be taken by councils against Crown organisations. A 'Crown organisation' is a Crown entity, government department, or government related organisation.



A local authority can now apply for an enforcement order against a Crown organisation, and an enforcement officer can serve an abatement notice or excessive noise direction on the Crown organisation.

Crown organisations can now be served with infringement notices or be prosecuted by a local authority or enforcement officer. However, the Court may not require a Crown organisation to pay a fine.

Section 340 of the RMA, which relates to the liability of principals for offending by their agents, has been updated to apply to Crown organisations and other legal persons which are neither people nor incorporated bodies.

#### **Extension of limitation period for prosecutions brought under section 338(1A) or (1B)**

The limitation period has been extended so that a prosecution may be brought up to six months after the prosecuting agency knew or should have known of the offending, instead of up to six months after the commission of the offence. This brings the limitation period into line with that applying to prosecutions brought under section 338(1).

#### **Improving workability and effectiveness**

Under section 22, enforcement officers may now require a natural person ('Person A') suspected of committing an offence under the RMA to give his or her date of birth.

An enforcement officer can now direct Person A to provide the date of birth of another person ('Person B') on whose behalf Person A has breached the RMA, but the requirement to give Person B's whereabouts has been removed.

These measures will help identify suspects and avoid them providing false information. They will also help the Ministry of Justice collect unpaid fines.

Section 352 now provides that documents can be served by email, where a person has specified an email address as an address for service. Documents can only be served by fax where the person served has specified a fax number as an address for service.

#### **OTHER INITIATIVES TO IMPROVE ENFORCEMENT**

For further information on enforcement refer to the RMA Enforcement Manual on the Quality Planning website ([www.qualityplanning.org.nz](http://www.qualityplanning.org.nz)). You can also refer to the Ministry's Everyday Guide to the RMA booklet 1.3 *Enforcement*; booklet 6.1 *Your Guide to the Environment Court*; booklet 6.2 *You, Mediation and the Environment Court*; and booklet 6.3 *Awarding Costs by the Environment Court*.

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