



Ministry for the
Environment
Manatū Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 1.3

Enforcement



Series Overview



1

- 1.1 Getting in on the Act
- 1.2 Resolving Resource Management Act Concerns
- 1.3 Enforcement
- 1.4 National Level Guidance and Processes

2

- 2.1 Applying for a Resource Consent
- 2.2 Consultation for Resource Consent Applicants

3

- 3.1 Your Rights as an 'Affected Person'
- 3.2 Making a Submission about a Resource Consent Application
- 3.3 Appearing at a Council Resource Consent Hearing

4

- 4.1 The Designation Process

5

- 5.1 Making a Submission about a Proposed Plan or Plan Change
- 5.2 Appearing at a Council Plan or Plan Change Hearing

6

- 6.1 Your Guide to the Environment Court
- 6.2 You, Mediation and the Environment Court
- 6.3 The Environment Court: Awarding and Securing Costs

Contents

Introduction	2
Enforcement action	2
When can councils take enforcement action?	2
Who can take enforcement action?	3
Types of enforcement action	3
Excessive noise directions	4
Water shortage directions	4
Infringement notices	4
Abatement notices	5
Enforcement orders	6
Emergency works	7
Application for a declaration	8
Prosecution	9
Glossary	11

Introduction

The Resource Management Act (RMA) sets out how the environment should be managed, and especially how the environmental effects of our activities should be managed. Under the RMA, regional and district councils have to monitor activities, and respond to complaints about those activities that people feel are negatively affecting the environment. When necessary, they can take 'enforcement action' if they think the RMA, a resource consent or their own district/regional plans are not being complied with.

This guide is for people who may be concerned about an activity and want enforcement action taken. It will also be helpful for those who are subject to enforcement action.

For more information on the RMA and resource consents, see 'An Everyday Guide to the RMA' booklets, series 2 and 3.

Enforcement action

Enforcement action is when councils (and sometimes other organisations or agencies) take steps to ensure that people are complying with the RMA, a resource consent, or with district/regional plans. These steps may involve persuasion, prosecution or a combination of both. Different types of enforcement action are explained further on in this booklet.

When can councils take enforcement action?

- » If someone carries out activities of a type that requires resource consent, but has not obtained that consent.
- » If the holder of a resource consent does not comply with its conditions, or if a requiring authority does not comply with the conditions of a designation. (See 'Glossary' for definitions).
- » If someone carries out activities that breach standards specified in the district/regional plan (such as noise, light spill, height of buildings, discharge rates or volume of earth that can be moved).
- » If someone does not comply with a requirement from a requiring authority or heritage authority – for example, a requirement limiting what can be built on a future road.

ENFORCEMENT



- » If someone does not comply with the RMA's requirements for everyone to avoid, remedy or mitigate environmental effects, or to avoid generating unreasonable noise.
- » If someone does not comply with a directive issued under the RMA, such as an abatement notice, enforcement order, water shortage direction or excessive noise direction.
- » If someone does not comply with a National Environmental Standard.

Councils don't take enforcement action every time they get a complaint or find out someone has been doing something to harm the environment. Around half of the complaints received by councils are dealt with informally. The rest are handled through the formal enforcement process.

Who can take enforcement action?

The power to take enforcement action rests with council staff known as 'enforcement officers'. These officers have the right to enter premises to detect offences, and to issue infringement notices, abatement notices and excessive noise directions. They cannot seize goods, but may collect samples. Enforcement officers must be warranted, meaning they carry warrant cards issued by the council, which list their powers and responsibilities.

While councils are primarily responsible for enforcement, everyone can play a part. You can help by keeping an eye on things, letting your council know if something doesn't seem right, or even applying to the Environment Court for enforcement orders.

Types of enforcement action

Under the RMA, the following enforcement tools may be used:

- » excessive noise direction
- » water shortage direction
- » infringement notice
- » abatement notice
- » enforcement order (issued by the Environment Court, rather than a council)

- » interim enforcement order (also issued by the Environment Court)
- » prosecution.

The following steps may also be taken (although they are not, strictly speaking, enforcement tools):

- » emergency works
- » applying to the Environment Court for a declaration clarifying a matter (eg, the legal status of an activity that is the subject of a complaint). Anyone may apply for such a declaration.

Excessive noise directions

Under the RMA, excessive noise is any noise that can ‘unreasonably interfere with the peace, comfort and convenience of any person’. This doesn’t include noise from aircraft, trains, or vehicles on roads, and must be heard from a place other than where the noise is made.

Council enforcement officers can issue noise directions either verbally or in writing. If you are issued with a direction, it must be complied with immediately. Otherwise, the source of the noise (such as a stereo) may be turned off or seized, and the council can make you pay a fine to collect it. So if your neighbour makes a reasonable complaint about noise, it makes sense to respond positively straight away. (See also ‘abatement notices’ over).

Water shortage directions

Water shortage directions can only be issued by regional councils. The direction may restrict or suspend for up to 14 days any form of water use (such as water takes, diversions or discharges). Directions must be complied with, even if the user of the water has obtained resource consent. Not complying with a water shortage direction is an offence under the RMA and may lead to prosecution.

Infringement notices

Infringement notices are for relatively minor offences (for example, real estate signs on council road reserve). They are issued by councils to make people more aware of their obligations under the RMA by paying a fine – rather like the traffic infringement notices issued by New Zealand Police.

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An infringement notice states the alleged offence and the fine payable. Once the fine has been paid to the council and the activity discontinued, usually no further action is taken. However, if the activity continues, an enforcement officer may issue another infringement notice, or decide to prosecute and seek formal orders from the Environment Court to make the offender comply.

Abatement notices

Abatement notices require people to take or stop actions so that they comply with the RMA, a district or regional plan, or a resource consent. Even if a plan permits a particular activity or someone has a valid resource consent, an abatement notice may still be issued if the activity is so harmful or objectionable that it is likely to have an adverse effect on the environment. An activity is defined as objectionable if a reasonable person would find it so.

An enforcement officer can issue an abatement notice before a problem happens, if they think it is likely to arise.

An abatement notice can also be issued for noise, meaning the person responsible has to use the best available method to reduce noise to a reasonable level. Nightclubs have received these types of notices in the past.

What happens if I am served with an abatement notice?

You must address the problem in the most appropriate way, within the time period set out in the notice. If you are concerned about the time period or the specific requirements of the notice, you can ask the council to amend it.

You have a right to appeal an abatement notice to the Environment Court. The notice will be put on hold until the appeal is dealt with, providing the activity you are engaged in complies with the RMA. Otherwise, you can apply to the Environment Court for a stay – or postponement of the abatement notice.

If you fail to act on an abatement notice and do not lodge an appeal, you are committing an offence under the RMA and could be prosecuted.

Enforcement orders

These are orders issued by the Environment Court. They can direct people to:

- » comply with a rule in a plan
- » deal with the adverse environmental effects of their activities
- » pay compensation for the costs of environmental clean-up
- » change or cancel a resource consent based on wrong information
- » restore a natural or physical resource that has been damaged.

Some enforcement orders are very specific and direct exactly what needs to be done. Others set clear parameters around 'what' needs to be achieved, but allow specialists to determine 'how' it is done. Any affected parties can go back to the Environment Court for clarification.

Anyone can apply for an enforcement order. Councils tend to apply for them when they need to sort out more serious and ongoing problems than those covered by abatement notices. They may also seek them when they want the certainty of a court-imposed solution.

Whoever applies for an enforcement order must notify everyone directly affected, including the person the order relates to. The Environment Court holds a hearing to allow everyone to have their say, and then makes its decision.

The Environment Court may issue an interim enforcement order before it holds a full hearing, without giving notice to affected parties. In doing so, the court will consider the effect on the environment if the order was *not* made; it will therefore need information about whether the situation is urgent and whether there is a threat of irreparable damage to the environment. An interim order relies on affidavit evidence from witnesses and experts, and can usually be obtained within one or two days.

ENFORCEMENT



Applying for an enforcement order

An application for an enforcement order needs to follow a specific format set out in the RMA. It must include:

- » the terms and nature of the order sought
- » the location in respect of which the order is sought
- » the name and address of the person against whom the order is sought.

Applications are lodged with the Environment Court and there is a \$55 fee. If you are thinking about applying for an enforcement order, you should seek legal advice and be aware that if an application is unsuccessful, the Environment Court can award costs against the applicant.

What happens if an enforcement order is issued against me?

You must comply with it; otherwise, you are committing an offence under the RMA and may be imprisoned for up to two years or fined up to \$300,000 (for individuals) or up to \$600,000 (for any parties other than individuals).

Emergency works

In emergency situations, councils and some other authorities can do (or require someone else to do) any work needed to prevent, remove the cause of, or fix any adverse effect arising from an activity – including adverse effects that are likely to happen. During such emergencies, council officers might go onto 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, emergency situations include sudden events causing or likely to cause loss of life, injury or serious damage to property. They also include situations when something must be done immediately to stop adverse effects on the environment, such as the discharge of a contaminant (eg, 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 costs of emergency works on private land can be recovered from the person who caused the problem in the first place. 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 not, strictly speaking, an enforcement tool, but a statement by the Environment Court clarifying legal matters. It might be issued before an abatement notice or enforcement order, in which case it can help a council draft the terms of those directives.

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 unsuccessful, the Environment Court can award costs against the applicant.

The 'best practicable option'

- » Many plans and resource consent conditions refer to the 'Best Practicable Option' – a concept that has come from case law (the Courts). The term simply means 'your best course of action'.
- » For example, when referring to the way discharges of contaminants are dealt with, it means you must use the best method for preventing or minimising harm to the environment – taking into account the type of discharge, the sensitivity of the environment, the cost compared with other options, the available technology and the likelihood of success.

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Prosecution

A prosecution occurs when a council takes someone to court. A council will lay charges under the RMA if the offending is significant enough and if it believes that punishing the offender will deter others. If the activity is sufficiently reckless and harmful, a council may choose to prosecute even someone who was cooperative after the offence was detected.

The proceedings are considered criminal proceedings. It is irrelevant whether someone intended to commit the offence.

A council must lay charges within six months of the time they found out (or could reasonably be expected to have found out) that an offence occurred.

Cases are heard in the District Court by a Judge with an Environment Court warrant. If the penalty for the charge includes imprisonment (see over), the accused can choose trial by jury.

The Judge can impose sentences other than (and sometimes as well as) a fine or prison term. These include community work, supervision orders and reparations (compensation to the community for the loss of valued, natural features). Reparations might take the form of replacement planting, donations to community environmental funds or education work.

The Judge may also order a resource consent to be reviewed, if the consent-holder has breached its conditions or if problems have arisen with how the consent is operating. In these cases, the council is able to impose more conditions to fix the problem, or even cancel the consent if there are significant adverse effects.

Following a prosecution, the District Court may also make enforcement orders, such as ordering the person convicted to pay the costs of fixing the problem. The Court may award all or most of any fines it imposes to the local authority, to cover the costs arising from the offending.



Offences and penalties

There are three levels of penalty applying to people who are prosecuted under the RMA. The three levels are:

1. Imprisonment for up to two years or a fine of up to \$300,000 (for individuals) or up to \$600,000 (for any parties other than individuals). For every day or part day that the offence continues, an additional penalty of up to \$10,000 may be imposed.

Offences to which this penalty applies include:

- » using land in a way that goes against a rule in a plan
- » reclaiming, excavating or building in the coastal marine area without resource consent
- » using the bed of lakes and rivers without resource consent
- » taking, damming or diverting water if not allowed by the plan
- » discharging contaminants if not allowed by the plan
- » going against an enforcement order, abatement notice or water shortage direction.

2. A fine of up to \$10,000. For every day or part day that the offence continues, an additional penalty of up to \$1000 per day may be imposed.

Offences to which this penalty applies include:

- » not providing an enforcement officer with details (name, address, date of birth etc) of other people who may be involved.
- » not complying with an excessive noise direction
- » not complying with an abatement notice for unreasonable noise.

3. A fine of up to \$1500.

Offences to which this penalty applies include:

- » obstructing people who are exercising powers under the RMA (such as enforcement officers)
- » not complying with a summons issued by an Environment Judge or Commissioner, refusing to give evidence at the Environment Court or refusing to answer questions from a member of the Environment Court
- » not complying with a summons or order to give evidence issued by a consent authority (a council).



Glossary

Abatement notices require compliance with certain directives within the time specified in the notice. They can be issued only by warranted enforcement officers, and are used to get someone to stop or to do something, or to prevent them from starting it.

Best practicable option means the best method for preventing harm to the environment.

City or district councils are primarily responsible for managing the environmental effects of activities on land.

Declarations are statements by the Court clarifying rights, powers, duties and other matters under the RMA.

Designations are provisions in district plans which provide notice to the community of an intention by the council or a requiring authority to use land in the future for a particular work or project. These also authorise the requiring authority to do their work without land-use consents.

District plans are prepared by city or district councils to help them carry out their functions under the RMA. They largely deal with the use of land and subdivision.

Emergency works can be done by councils to prevent harm to the environment in an emergency. Councils can do the works themselves, or they can order occupiers of land where the situation arises to provide assistance.

Enforcement orders are a way of getting someone to comply with the RMA. They differ from abatement notices in that an order is issued by the Environment Court, and anyone (not just a council) can apply for one against someone else.

Environment Court is a specialist court where people can apply for an enforcement order, initiate prosecutions, seek declarations or appeal council decisions.

Excessive noise directions are issued by a council. They can be either written or verbal, and require people to stop making unreasonable noise.

Infringement notices are instant fines that a council issues for relatively minor environmental offences.

Interim enforcement orders may be issued by the Environment Court without a full hearing if there is a need for urgent intervention – such as the threat of irreparable damage to the environment if no action is taken quickly.

Natural persons are individuals who are not acting as part of a group or body of persons. Such groups or bodies include Crown organisations, and corporate and unincorporated bodies.

Offences are defined in the RMA, and there are three levels of maximum penalty for different offences: \$300,000 fine or imprisonment for up to two years (up to \$600,000 fine for any parties other than individuals), \$10,000 fine; and \$1500 fine.

Prosecution is when charges are laid against a person in a criminal matter.

Regional councils primarily manage resources like the air, water, soils and the coastal marine area.

Regional plans are prepared by regional councils to help them carry out their functions under the RMA. They largely deal with the use of air, water, soils and the coastal marine area.

Requiring authority is an authority (such as a Minister of the Crown, a local authority or a network utility operator) that has the power to designate a particular piece of land to be used for certain works or projects.

Resource consent is permission from council for an activity that is not allowed as of right in the district or regional plan.

Water shortage directions can be issued by a council ordering someone to stop using a water source (for taking, damming or discharging), even if a resource consent is in place.



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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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