

Summary of upcoming changes to compliance, monitoring and enforcement provisions of the RMA

The Resource Management (Consenting and Other System Changes) Amendment Bill is expected to make several key changes to the compliance monitoring and enforcement (CME) framework in the RMA this year.

The proposed CME amendments are described in the explanatory note to the bill as *system improvements*. These new approaches are likely to be maintained in the expected new RMA legislation, including because the changes align with the government's current policy on CME, and because they replicate several system changes that were made by the previous government in the now repealed Natural and Built Environment Act.

Overall, the changes reflect an acceptance that for environmental regulation to operate efficiently and effectively the system also needs to be rigorously observed, and strong CME is an important (though sometimes neglected) aspect of this.

The key changes

- Significant increases to the maximum penalties for offending against the RMA, which are likely to have an almost immediate impact on the sentences being imposed by the Courts.
- Removing the option to elect a jury trial for RMA charges.
- Removing the ability to insure against financial penalties for non-compliance.
- Seeking to provide for fuller cost recovery by Councils when compliance monitoring is required, regardless of subsequent enforcement outcomes.
- Allowing for consideration of poor compliance histories in resource consent processes.

Changes to penalties for RMA offending

Current maximum penalties in the RMA are due to be uplifted:

- from \$300,000 for an individual, to \$1 million;
- from \$600,000 for a corporate entity, to \$10 million.

To state the obvious, this is a significant uplift. This uplift would see a new maximum for corporates of more than 16 times what is currently in the act. The only previous change to the maximum penalties in section 339 of the RMA was made in 2009, which then provided for just over a doubling of the maximum fine for corporates.

Once they commence, the new maximum penalties will immediately become a relevant consideration for the Court in considering sentence,¹ and the degree of uplift in the maximum fine is also likely to be taken into account by the Courts when assessing starting points for sentence in relation to previous comparable cases.

It is therefore reasonable to expect that penalties imposed for environmental offending are likely to jump up considerably shortly after the new maximums take effect; and over time these changes will also guide further incremental increases in penalties for the most serious offending to align with the new provisions.²

Judge Alone Trials only for RMA charges

While the maximum fines are planned to be substantially increased, the maximum term of imprisonment for environmental offending is proposed to be reduced. While this change aligns with the reality that no one has ever been sentenced to the currently provided maximum term of two years imprisonment for any RMA offences – the change is most likely being driven by the fact that it will also remove the option for a defendant to elect trial by jury in relation to an RMA charge.

Alongside the categorisation of any offence, the maximum term of imprisonment provided in legislation is relevant for whether a defendant can elect trial by jury

¹ s8(b) Sentencing Act 2002

² s8(c) & (d) Sentencing Act 2002

Summary of upcoming changes to compliance, monitoring and enforcement provisions of the RMA

for any charges they may be facing. The proposed reduced maximum term of imprisonment of 18 months means that a defendant facing an RMA charge will no longer be able to elect trial by jury. The jury trial system has been under significant pressure for several years, so this change will make a minor contribution to reducing some of that load on the District Court.

No ability to insure against fines

One of the most important proposed amendments would insert a new section in the RMA that will restrict any person from entering a contract of insurance that might indemnify them from liability for payment of a fine or infringement fee imposed under the RMA. This would ensure that an offender will be penalised financially for their offending, in ways that they might not have been if a large part of any fine had previously been covered by statutory liability insurance.

This new insurance limitation does not extend to prohibiting coverage for legal or remediation costs associated with any breaches of the RMA. One possible consequence of this might be that there are increased efforts by offenders to remediate, to seek to mitigate the effects of an offence and thereby reduce the potential fine to be imposed.

This limitation on fines is intended to take effect two years from the date of assent for the amendment. It is possible there may be broader implications depending on how insurance companies choose to offer contracts of insurance in the light of this new limitation.

Increased cost recovery for CME

The amendment bill includes new subsections in section 36 to expand the explicit support in the Act for administrative charges to be fixed by Councils to recover the costs of compliance monitoring (unless the activity is permitted in a national environmental standard). In the past a Council may have reserved costs recovery to occur closer to the end of an enforcement process, but the proposed new provisions make it clear that fees should be charged on an ongoing basis, including at the time of making of inquiries into a possible contravention; and when

compliance and enforcement steps are being taken in response to a breach. This may enable Councils to be better resourced to carry out increased levels of compliance monitoring and enforcement.

Councils will still need to ensure adequate provision is made in their fees and charges policies to enable these fees to be charged, however this is likely to be implemented relatively promptly by most local authorities.

Relevance of compliance history for consents

The amendment bill also proposes to add to section 104 of the Act to enable a consent authority to consider the compliance history of an applicant, and to decline an application for a resource consent if the applicant has a record of ongoing, significant or repeated non-compliance with a requirement of the RMA and/or if they have been convicted of an offence RMA and/or are subject to an enforcement order. This is a significant new power enabling a decision maker to consider declining a consent, with a high potential impact for a small number of applicants.

Bill progress

The Environment Select Committee has reported back on the amendment bill and the final step to enact the bill is expected soon (the Government has signalled enactment by mid-2025). All changes are due to take effect the day after the amendment bill receives royal assent, except the insurance provision which comes into force after two years (to properly allow time for current insurance policies to be updated).

Want to know more?

If you have any questions about compliance monitoring and enforcement under the Resource Management Act 1991, please contact our specialist resource management team to discuss.