



Registered Master Builders Association of New Zealand Incorporated

Consultation on the Review of the Resource Management
(Infringement Offences) Regulations 1999

March 2023

The Registered Master Builders Association consultation on the Review of the Resource Management (Infringement Offences) Regulations 1999

The Registered Master Builders Association (RMBA) welcomes the opportunity to submit to the Ministry for the Environment on the *Review of the Resource Management (Infringement Offences) Regulations 1999*.

About RMBA

The RMBA represents over 3,000 commercial and residential builders and are the leading sector advocates on the built environment. Our sector is a key contributor to the New Zealand economy, with every \$1 million spent on house building supporting \$2.6 million across the wider economy. We are working hard to lead the change our sector needs. Ensuring we have the regulatory systems and processes which will enable us to build faster and better. We are supporting our members to grow their capability and business acumen to ensure a strong and healthy sector; to innovate and make the most of new technologies, to meet the climate change challenge; and to attract, train and retain skilled talent. We are proud to be New Zealand's best builders.

At Master Builders, we are committed to transforming the sector and rebuilding our economy. We are focused on building better homes, communities and workplaces and, ultimately, better lives for all New Zealanders. We want to ensure that the houses we build now are accessible, affordable, and appropriate to the needs of our ever-changing society. We are building a better New Zealand.

1. Summary of the Review of the Resource Management (Infringement Offences) Regulations 1999

1.1. The Resource Management Act 1991 (RMA) provides councils with a range of powers to take enforcement action when they find environmental non-compliance. Non-compliance means any breach of a rule, condition, standard, direction, or regulation made under the RMA. A range of non-statutory and statutory enforcement tools are available to councils to respond to non-compliance so they can tailor their response to the nature and severity of any offending. The purpose of enforcement action is to punish offenders, deter future offending and/or direct remediation of the damage. The RMA provides statutory enforcement tools that are either:

- *punitive (including infringement notices and prosecutions) or*
- *directive (abatement notices and enforcement orders).*

1.2. This consultation is about infringement notices. An infringement notice is an 'instant fine' for environmental non-compliance that is serious enough to need a penalty but not serious enough to warrant prosecution in court. When an infringement notice is issued, no conviction is imposed, and the infringement fines are paid to the council that issued the infringement notice (RMA, section 343D).

1.3. The maximum fine that can be set for an infringement offence is prescribed in primary legislation under section 360 of the RMA. That maximum fine was increased in 2020. However,

the individual offences for which infringement notices can be issued – and the associated fine for each of these offences – are set in secondary legislation, the Resource Management (Infringement Offences) Regulations 1999 (the Regulations).

2. The current fines are not effective

- 2.1. There is concern that the existing Regulations are now out of date, and that the infringement fines are set at a level that is too low to be effective.
- 2.2. The New Zealand Productivity Commission noted in its 2013 report that the “low level of fees that have not been reviewed for many years are reducing the effectiveness of enforcement strategies”. For example, in that report, Auckland Council notes that an infringement notice for the breach of a land-use rule in a district plan incurs a \$300 fine. They stated that the cost of applying for resource consent is usually more than ten times this amount. Therefore, they considered the deterrent effect of the current infringement fines minimal and insufficient to deter non-compliant behaviour for some offenders.
- 2.3. The Regulations are out of date, and infringement fines are too low to be an effective penalty for non-compliance. This means council use of infringement notices are less effective at deterring environmental non-compliance and reducing environmental harm. The Regulations need to be reviewed to ensure infringement fines are fit for purpose, consistent, provide an appropriate level of deterrence and are aligned with the empowering sections of the RMA.
- 2.4. The maximum infringement fines are set in the RMA. The recent decision by Parliament to increase the maximum infringement fines was made with the expectation that a review of the Regulations’ infringement fines would follow. The 2020 RMA amendments limit the scope of this review and the options this review may consider. The infringement fines cannot be increased beyond the *statutory maximum of \$2000 for individuals and \$4000 for companies*.

3. Preferred policy option

- 3.1. The preferred policy option proposes a proportional increase to fines, except that the fine for two offences would be increased to be a higher proportion of the maximum:
 - the fine for contravening land-use rules created under an NES or under a regional plan would be increased from the current 30% of the maximum to 75% of the new maximum, which is \$1500 for natural persons or \$3000 for companies.
 - the fine for contravening an abatement notice (a tool used to require non-compliant operators to comply) would be increased to 100% of the maximum, which is \$2000 for natural persons or \$4000 for companies.
- 3.2. Under the proposed policy option, most fines would either double or quadruple, except for the fines for contraventions of section 9(1) or 9(2), which would increase five-fold from \$300 to \$1500 (for individuals) and ten-fold from \$300 to \$3000 (for companies).
- 3.3. The policy option reflects the policy intent of the increases to the fine maximum in the legislation but also addresses two specific internal consistency issues where circumstances

have changed since the regulations were first introduced and where a change to the relative size of the infringement fine is appropriate. The fine increases are broadly consistent with inflation since 1999, except in the two specific cases where a higher than inflation adjustment is appropriate.

4. Who is likely to be affected?

4.1. Resource management infringement notices are issued for non-compliance with resource management laws, regulations, rules, and resource consents. Therefore, any user of the resource management system is potentially affected by these changes if they contravene any regulatory requirements. Given that we all interact with natural resources to some extent, the application of these changes is very broad. Those parties could include infrastructure providers, farmers, contractors, companies, and homeowners.

5. RMBA's overarching view

- Do you agree that the fines need to increase? If not, why not?
 - 5.1. We agree that the fines need to increase, and we believe Option 2 best reflects the policy intent of increasing the maximum fine in the legislation while also addressing two specific internal consistency issues.
 - 5.2. Companies are currently not held accountable appropriately for breaches of the RMA. Not enough enforcement involved, and our members often see themselves spending considerable time and resources on consenting and are finding it frustrating to see others disregarding the process. We agree it is often the case that the fine associated with an infringement notice is less than the cost of getting a resource consent, meaning it can be cheaper to pay the fine than to follow the rules.
 - 5.3. We support the Ministry in reviewing the Regulations to ensure infringement fines are fit for purpose, consistent, and adjusted to reflect inflation since they were last reviewed (as part of the Option 2 proposal). We believe infringement fines should provide an appropriate level of deterrence, reinforcing the seriousness of the breaches, and should be aligned with the empowering sections of the RMA.
 - 5.4. However, we also wish to see consequences that act as deterrents rather than punishments. Considering the hardship, stressors, and increasing costs the sector is already facing, we do not wish to see consequences that could result in further economic burdens for an already stretched sector.
- Are there any fines that shouldn't increase? Are there other options for increasing the fines that we haven't considered? What are they? And why would they be better?
 - 5.5. RMBA supports the proportional increase to fines (including the two exceptions) proposed in the preferred Option 2. However, we believe there should be a distinction between accidental and deliberate breaches of the RMA. Currently, it is cheaper to intentionally breach and pay a fine than to comply with the legislation. Increases for accidental breaches should be minimal. However, the Ministry should consider a different limit for intentional breaches and failure to

comply with the requirements of an abatement notice issued under the Act. We understand this may require putting a system in place to prove whether a breach is intentional or accidental.

5.6. Increased maximum fees may also result in companies being more likely to challenge infringement notices, reducing their effectiveness as quick punitive measures and resulting in resource and time-consuming litigation processes.

- *Do you agree with our preferred approach? If not, why not? What approach should we take instead, and why?*

5.7. We agree that Option 2 best reflects the policy intent of the increases to the fine maximum in the legislation but also addresses two specific internal consistency issues where circumstances have changed since the regulations were first introduced and where a change to the relative size of the infringement fine is appropriate.

5.8. However, we wish to see a distinction in approach between intentional and accidental breaches, as mentioned in our comments above.

5.9. We expect the increase in fines will encourage greater compliance, leading to better performance and less non-compliance with environmental protection rules. This will consequently lead to improved environmental outcomes and reduce pressures on our natural resources.

5.10. However, we are also aware that an increase in the infringement fines may contribute to an increase in non-payment of infringement notices issued by councils, reducing their deterrent effect.

5.11. Councils may face more frequent legal challenges to the infringement notices they issue, particularly if the fines are perceived to be unreasonably high. This could be the case with the two exemptions in Option 2, where fines would increase from the current 30% of the maximum to 75% of the new maximum (\$1500 & \$3000) and 100% of the new maximum (\$2000 & \$4000).

5.12. An increase in legal challenges would add costs and administrative burden on issuing councils. If the challenges were frequent and successful, this could have the unintended effect of dissuading some councils from issuing infringement notices.

5.13. We recommend that the Ministry focus on educating the sector on the new changes to the infringement fees once they are established to help clarify the changes and their objectives. We also recommend collaborating with non-compliant parties and only using escalated enforcement against deliberate, repeat or reckless offenders.

5.14. Harsher penalties should be introduced for reckless offenders and their poor performance should be reported.

5.15. This process could contribute to establishing an auditing system for MBIE, allowing the Ministry to identify and prioritise companies with a good record of compliance, and to target and take disciplinary action against companies with a poor record of compliance. This system could be

introduced aligning with the building consenting system review and will help streamline consenting processes.

6. Impacts on the building and construction sector

- *Are there impacts from increasing the fines that we haven't considered? What are these?*
 - 6.1. New Zealand's housing and building and construction sector is already facing significant challenges and strong headwinds. Inflation and the cost-of-living crisis are likely to worsen, and the costs of building will continue to increase.
 - 6.2. RMBA understands it is critical to establish infringement fines that will provide a more effective deterrent for companies to discourage non-compliance with plan rules or consent conditions and help preserve New Zealand's natural and built environment. However, disproportionately increasing infringement fines for accidental breaches may have a debilitating effect on many players involved in the building and construction sector, consequently impacting the sector's performance, productivity, and capability.
 - 6.3. Construction businesses have been experiencing higher demand for building activity while also facing supply-chain and product availability issues, higher labour costs, and skill shortages. Record high new dwelling consents issued and the demand for residential building activity are contributing to the rise in construction costs and may further impact the residential market and its ability to continue building at this pace.
 - 6.4. These issues are having a major impact on the sector and are likely to result in future project delays and additional costs and a rise in delays in dwellings being built. For this reason, it is important that the sector is appropriately informed and supported of any changes implemented along with their consequences.

We thank you for the opportunity to make this submission.

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