

Compliance and Enforcement under the New Planning System

This practitioner guidance details the amendments made by Schedule 12 of the Planning Act 2026 to the compliance and enforcement provisions of the Resource Management Act 1991 (RMA) and that apply during the transition period.

Changes to the RMA that apply during transition

Changes that commence on the day after the Planning Act receives Royal assent

Part 1 of Schedule 12 of the Planning Act 2026 makes changes to the wording of s342A of the RMA that prohibits insurance for fines. Fines indemnity insurance remains prohibited, but the wording of the provision has been narrowed to clarify that only indemnity provided through a contract of insurance is prohibited, and other forms of indemnity (such as commercial indemnity) is excluded. This change commences on the day after Royal assent.

Changes that commence one month after the Planning Act receives Royal assent

Part 2 of Schedule 12 of the Planning Act 2026 makes a series of changes to compliance and enforcement provisions in the RMA that commence one month after Royal assent.

Compliance with rules in initial national standards

National direction for the new system will be developed during the transition period. National direction may prescribe initial national standards that include rules, and these rules may have effect during the transition period.

Changes have been made to multiple provisions across the RMA to ensure compliance with rules in initial national standards can be monitored and enforced. Reference to initial national rules have been added to the provisions related to:

- duties and restrictions (part 3 RMA), so that a rule in an initial national standard has similar effect as a national environmental standard (NES) in s9–17 of the RMA
- administrative charges (s36), allowing charges to be fixed for monitoring compliance with permitted activity rules in initial national standards (where enabled in the initial

national standard), and for responding to complaints about non-compliance with a rule in an initial national standard

- the scope of enforcement orders (s314), to enable an enforcement order to be made in relation to a contravention of a rule in an initial national standard
- the scope of abatement notices (s322), to enable an abatement notice to be issued in relation to a contravention of a rule in an initial national standard
- the meaning of excessive noise (s326), to enable a standard for noise to be prescribed through a rule in an initial national standard
- powers of entry for inspection (s332), to enable an enforcement officer to enter private property to inspect whether a rule in an initial national standard is being complied with.

Fees and charges

The Resource Management (Consenting and other System Changes) Amendment Act 2025 made changes to s36 of the RMA to enable councils to fix fees for monitoring compliance with plan permitted activity rules, and for responding to verified reports of non-compliance.

Proactive monitoring of permitted activity rule compliance

Councils are empowered to fix fees for proactive compliance monitoring of plan permitted activity rules under s36(1)(caaa). However, if there is a rule in an NES that permits the same activity as the rule in the plan, a council may not use s36(1)(caaa) to fix a fee for monitoring compliance with its plan rule. The council may instead be able to fix a fee under s36(1)(cc), but only if the NES empowers charging for compliance monitoring (as per s43A(8)).

Schedule 12 amends the wording of section 36(1)(caaa) so a rule in an initial national standard has the same effect as an NES. This means that if a rule in an initial national standard permits an activity that is also permitted by a plan rule, a council can't fix a compliance monitoring fee under s36(1)(caaa) but may be able to fix a fee via the provisions of s36(1)(cc) if charging for monitoring is enabled by the initial national standard.

Reactive response to complaints (s36(1)(caab))

Schedule 12 amends the wording of s36(1)(caab) to extend its scope to include complaints about contraventions of rules in initial national standards. This means that local authorities are enabled to fix fees that apply when an enforcement officer investigates a complaint and verifies that a person has contravened a rule in an initial national standard.

Adverse Publicity Order (s325C)

A new provision (s325C) is inserted into the RMA that enables the Court to make Adverse Publicity Orders (APO) if a person is convicted of an offence under the RMA.

An APO requires an offender to undertake specified actions to publicise non-compliance, its consequences, penalties or orders, and other specified information.

APOs are a regulatory publicity tool designed to make enforcement activity visible, with the aim of enhancing deterrence.¹ APOs can provide general deterrence within an identified audience, target group or sector, to promote behaviour change and to improve compliance with planning and/or environmental rules. APOs can also provide specific deterrence, particularly where the person ordered has a genuine desire to restore their reputation and standing in the community.

Separate guidance on APOs is being developed to support local authorities to use this new compliance tool.

A new offence of contravening an APO has been added to the offence provisions in s338 of the RMA.

Powers of entry for inspection (s332)

Powers of entry for inspection have had several technical amendments.

Marae have been added to a dwelling house as a place excluded from the general power of entry for inspection (s332(1)). This means that an enforcement officer is not authorised to enter a marae to inspect for compliance, and entry is only lawful if authorised by a search warrant. There is no specific statutory definition in the RMA of 'marae', but definitions exist in other legislation.² These definitions are similar to each other, typically including the area of land on which buildings (such as the wharehau (meeting house), the wharekai (dining hall), the wharepaku (toilet) and associated buildings) are located. The High Court has also examined the meaning of the term marae and reached a similar interpretation.³

As discussed previously, the power of entry for inspection has been extended to enable an enforcement officer to enter private property to conduct an inspection to assess if a rule in an initial national standard is being complied with (s332(1)(a)).

S332 has also been updated to explicitly reflect the finding of the High Court in *Re Waikato Regional Council*⁴ so that s332 of the RMA explicitly enables enforcement officers to collect records of their inspections (including measurements, notes, sketches, drawings, photographs, and video recordings), as well as taking certain samples.

¹ Deterrence refers to the prevention of future offending through the prospect or experience of enforcement action. General deterrence seeks to discourage others from similar offending by demonstrating that non-compliance has consequences, while specific deterrence seeks to discourage the offender from reoffending by imposing consequences directly on them.

² For example, the Animal Welfare Act 1999, the Customs and Excise Act 2018, the Coroners Act 2006, the Human Tissue Act 2008 and the Animal Products Act 1999.

³ *Manukau v Ministry of Fisheries*, HC Auckland M984/97, 29 July 1998.

⁴ *Re Waikato Regional Council*, HC Auckland AP18-SW03, 25 June 2003.

Search warrants

The provisions relating to search warrants have also had several technical amendments.

S334(1) has been amended to address a circularity between the RMA and the Search and Surveillance Act 2012 identified in *R v John Turkington Limited*,⁵ to explicitly confirm that either a constable or an enforcement officer may apply for a search warrant under the RMA.

S335 has been amended to clarify that a search warrant issued under s334 may be directed to any constable or an enforcement officer, except where the search warrant authorised entry to a dwelling house or marae, in which case the warrant must be directed to and executed by a constable.

Where a search warrant is directed to an enforcement officer, the enforcement officer must be accompanied by a constable during the initial entry, but subject to the agreement of the enforcement officer that the constable's presence is no longer required, the constable is no longer required to remain on site for the entire duration of the search warrant.

Penalties (s339)

Minor and ancillary maximum penalties have been increased. The maximum penalty for the ancillary offences in s338(2) have been increased from \$10,000 to \$15,000, and the continuing offence further fine has been increased from a maximum of \$1,000 to a maximum of \$1,500 (s339(2)).

These ancillary offences include failing to provide identity information under s22, contravening an excessive noise direction or an unreasonable noise abatement notice, contravening s42, which relates to the protection of sensitive information, or contravening an order other than an enforcement order made by the Environment Court.

The maximum penalty for obstructing, hindering, resisting or deceiving any person in the execution of their powers under the Act, or for refusing to attend or co-operate with the Environment Court, or for committing an offence related to esplanade strips or easements has been increased from \$1,500 to \$5,000 (s339(3)).

Resource Management (Infringement Offences) Regulations 1999

The Resource Management (Infringement Offences) Regulations 1999 (the Regulations) were reviewed in 2025. The review updated the offences prescribed as infringement offences, increased the fees associated with each infringement offence, and introduced different fees for natural persons and corporate persons.

Part 5 of Schedule 12 of the Planning Act makes a minor technical amendment to Schedule 1 of the Regulations, updating the heading in the third column from 'individual' to 'natural person' and updating the heading in the fourth column from 'company' to 'other person'.

⁵ *R v John Turkington Ltd* [2022] NZDC 18392, paras [75]-[96].

This amendment is to align the infringement notice provisions with the definition of a person in the RMA and clarifies that an unincorporated body of persons may be issued with an infringement notice.

The standard form for an infringement notice (schedule 2) and a reminder notice (schedule 3) has been amended to delete the text that says, “Payments by cheque should be crossed ‘Not Transferable’”, as cheques are no longer an available payment option.

