

# **Enforcement & Compliance under the Natural Resources Management Act 2004 (including Appeal Rights)**

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# Compliance with What?

## General standards of behaviour

### Section 9 - General Statutory Duty

“A person must act reasonably in relation to the management of natural resources within the State.”



# Compliance with What?

## Specific obligations - Soil conservation / landcare

- Not to “unreasonably” degrade land (s.122)
- Not to undertake land management practices that are likely to cause an “unreasonable risk” of degradation of land.



# Compliance with What?

## Specific obligations - Water

- To obtain a water licence (s.127)
- To take “reasonable measures” to prevent damage to watercourses or lakes. (s.133)





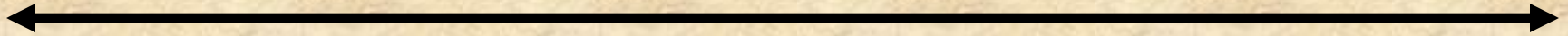
# **Compliance with What?**

## **Specific obligations - Pest plants or animals**

- To control pest plants or feral animals (s.182)



# Overview - Enforcement



**Encouragement**

**Administrative Orders**

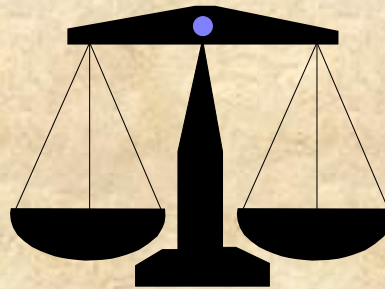
**Prosecution**

**Education**

**Civil Enforcement**

**Incentives**

**Third party Civil Enforcement**



# Overview - Enforcement

- **Civil Remedies - Administrative Orders & Civil enforcement ( court orders )**
- **Criminal Remedies**

also

Appeals against administrative decisions



# **Administrative Orders**

**Action Plans (soil & pests)**

**Protection Orders (s.193)**

**Reparation Orders (s.195)**

**Reparation Authorisations (s.197)**





# **Administrative orders**

**Not a “first resort”**

**ie. Use negotiation first**

Duty to seek voluntary action to fix problem before requiring an “action plan” for land degradation [s.122 (3)]



# Administrative Orders

Action plans can also be ordered for breaches or anticipated breaches of animal & plant control provisions.

No specific requirement to consult first - but see s.7(3)(g) re “encourage action before resorting to formal processes”.



# **Administrative Orders**

**Any NRM authorities who are too heavy-handed or who rush straight into formal enforcement action are likely to have their enforcement decisions appealed.**



# Civil Remedies

## Who has standing? (s.201)

- the Minister or the Chief Officer; or
- an NRM authority;





# **Civil Remedies (cont.)**

## **Who has standing? (s.201) (cont.)**

- any person whose interests are affected by the subject matter of the application; or**
- any other person “with the leave” of the ERD Court.**



# Civil Remedies (cont.)

## What orders can be sought?

- restraining orders (Injunctions)
- requirements to take action
- compensation
- “ill-gotten gains” to be repaid
- exemplary damages

**NB. Proof “on balance of probabilities”**



# Civil Remedies (cont.)

## Problems with standing

- Meaning of *“any person whose interests are affected by the subject matter of the application”*; or
- Determining who else should be entitled to the *“leave of the ERD Court”*.
- Role of conservation groups?





# **Civil Remedies (cont.)**

## **Problems with costs**

- **Legal Costs - the loser will nearly always pay the winner's costs.**
- **But, Court may have regard to whether case is "personal" interest only or "wider group interest or the public interest"**
- **Court may also have regard to whether proceedings "raise significant issues" in the administration of the Act. (eg. Novelty of proceedings and precedent value" (s.201(19))**





# Criminal Liability

Examples of offences to be heard in the ERD Court (s.216)

- Failure to prepare or implement an Action Plan to prevent land degradation (s123) or pest plant / animal control (s183);
- Failure to obtain a water licence (s127);
- Failure to rectify unauthorised activity (s130);
- **Failure to comply with protection orders & reparation orders.**



# Criminal Liability

## Penalties:

eg. Illegally taking water

- \$70,000 for companies
- \$35,000 for individuals; OR
- \$25 per kilolitre

whichever is greater.



# Criminal Liability

- **Directors' Liability (s.219)**
- **Daily penalties for continuing offence (s221)**
- **Vicarious Liability - employers are responsible for employees or agents (eg. sub-contractors) (s.213)**



# General Defence

s.218 - It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was **not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.**





# **How will NRM authorities decide WHAT enforcement method to use?**

**Enforcement guidelines? None at  
present so nothing to guide them**

**See EPA policy on civil enforcement  
actions under the Environment  
Protection Act**



# Trends in enforcement?



**Role for administrative remedies and civil enforcement?**

**Role for criminal prosecution?**

**Lower civil burden of proof**

- **Emphasis on fixing problem & recovering costs**



# Right of Appeal (s.202)

Available for most “administrative actions” where the rights of individuals are affected.

## Examples:

- Owners of land can appeal against requirements to prepare and implement Action Plans (s.123 & 183)
- Applicants for water licences can appeal against refusals (s.146)
- Applicants for permits re pest plants or animals can appeal against refusals (s.188)





# **Powers of Court on determination of appeals**

**The ERD Court may**

**(a) confirm, vary or reverse any decision, order, direction or restriction appealed against, ...;**

**(b) remit the subject matter of the appeal to any person or body under this Act for further consideration;**

**(c) order or direct a person or body to take such action as the Court thinks fit, ...**

