SUBMISSION

We are. LGNZ.

< We need sound legislation and regulation for efficient delivery of services >

Rules Reduction Taskforce

Local Government New Zealand's submission to the Rules Reduction Taskforce

11 June 2015

We are. LGNZ.

Contents

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

Introduction

Local Government New Zealand thanks the Rules Reduction Taskforce for this opportunity to contribute to its investigation into unnecessary rules and regulations. Like the Government LGNZ is similarly committed to developing a regulatory system that is as efficient, customer-focused and effective as possible however many of the constraints on efficient delivery of services lie with the legislative and regulatory rules that govern the way in which councils operate.

The Task Force has requested information on specific rules and regulations that impact directly on properties and business. We have included a number of examples of such rules and regulations within our submission. However, of equal concern is the indirect cost of rules and regulations. In particular the cost to citizens and businesses of the extensive framework of rules and regulations that govern decision-making in local authorities. The immense scale and impact of this regulatory framework, which has shown almost exponential growth over recent years, has created a complex decision-making environment that has had dramatic effects on the cost of local government and its culture, especially in the way staff and elected members approach risk. The problems with the legislative framework include:

- Over prescription that results in reducing the flexibility of councils to design processes to reflect the diversity and uniqueness of their communities;
- Failure to consider risk when designing accountability processes so that a small council like Kaikoura District must provide the same level of information and meet the same accountability requirements as a large council like Auckland; and
- Failure to provide certainty with frequent changes over the last 20 years creating ongoing costs for councils as they change processes, redeploy staff etc.

Central government fails to consider the costs and benefits of its reforms on communities. Councils need greater certainty about the nature of the decision-making and accountability frameworks and they need a framework that is flexible, acknowledges risk and scale and recognises that councillors and mayors are elected on behalf of communities to exercise governance and stewardship and are accountable to those electors.

Ultimately the legislative and regulatory framework has a profound effect on a local authority's culture. A well acknowledged example is the impact of "joint and several liability", which we discuss below. The behaviour of councils and their officials in relation to the implementation of the Building Act is heavily affected by the potential risk of regulatory failure. More general lessons can be drawn from this.

LGNZ believes that there is too much reliance on prescription and control in the local government environment. We have identified many regulatory processes that are unnecessarily complex and that ultimately sheet costs home directly to property owners or indirectly to property owners as the general ratepayers. Streamlining some of these processes will make a significant difference.

We believe better outcomes will be achieved through the use of incentives, provision of information and investment in training and up-skilling, of both governing bodies and officials.

A simple matter is that legislation keeps pace with technology changes so that local authorities that are working to conduct more transactions online are not stymied because of the need, for instance, for a physical signature on a form.

A key finding of the Productivity Commission's 2012 enquiry into local government regulation[1] was there is too much siloed thinking at central government level.

Amongst the Productivity Commission's recommendations for improving regulation are the following:

- a tool for helping to decide what regulations, and which parts of implementing regulation, are best performed by Government or by councils;
- use of standardised formats and increased transparency to better demonstrate how key council regulatory decisions have been made;
- more focus by government departments, when preparing new regulation intended to be implemented by councils, on the costs and benefits of the proposed regulation, where those costs and benefits will fall, whether or not councils have the capability and capacity required to effectively implement the new regulation, and the likely costs of building that capability and capacity where it does not exist;
- the development of a 'Partners in Regulation' protocol to better guide Government/ council engagement;
- the development of new or enhanced joint Government/council forums for overseeing improvements; and
- greater use of risk-based approaches to monitoring and enforcement of regulation by councils, together with enabling greater use of infringement notices to support regulations in place of more costly formal prosecutions.

This submission focuses on the two significant pieces of legislation for local government: the Building Act and the Resource Management Act, and then some commentary on the other pieces of legislation that also create challenges or inefficiency in their implementation.

National regulation

The Productivity Commission's recommendations place emphasis on regulation as a system. This requires, in the first instance, decisions to be made about whether a regulatory response to an emerging issue is the appropriate response and then subsequently, should a regulatory response be the correct one, whether it requires the consistent application of national standards or is better addressed through locally specific standards and thus local discretion. There are some important questions that should be considered, for example: whether the issue under consideration is of national scale or whether it has significant local differences. For example, some councils have formed bylaws to regulate the tattoo and body piercing industry yet the issue does not display either district or regionally based differences. The public health risk is exactly the same wherever the activity occurs in NZ, suggesting that a nationally consistent approach should be favoured.

When new or amended regulations are under consideration, attention must be given to existing regulations and either sharing or replicating existing regulatory processes for the new regulations. The different processes used in implementing the Sale of Alcohol Act and the Psychoactive Substances Act are a case in point.

Regulations should not be adopted unless there are reasonable powers to enforce them. A specific example (since fixed) was the previous Liquor Ban bylaws that did not have an infringement system. The police had to arrest individuals for a breach of the bylaw in order to prosecute. Unfortunately this weakness of the lack of an infringement system continues for bylaws made under the general bylaw provisions of the Local Government Act 2002, so the only recourse is prosecution (see below).

Efficiency requires that decision-making powers are able to be delegated to the lowest capable level so that governing bodies can delegate to appropriate staff the authority to exercise minor exemptions. This issue is raised in the body of the submission in relation to swimming pools where minor exemptions can only be given by the full governing body.

[1] http://www.productivity.govt.nz/inquiry-content/1510?stage=4

Building regulations and resource management/planning

Building regulations

In 2009 Government agreed to review the Building Act to "reduce costs, but not the quality of the building control system". Extensive stakeholder and public engagement has resulted in several areas of reform including amendments to the Act to improve consumer protection and the licensed building practitioner scheme. LGNZ and local authorities are working closely with MBIE as this work progresses and we stress the importance of maintaining the momentum of this reform. A number of areas of reform are still to be actioned including regulations for risk based consenting and changes to the liability regime.

Local authorities strongly support the intent of the reforms to rebalance and more appropriately allocate responsibility and accountability between consumers (homeowners), building consent authorities and building professionals.

Joint and Several Liability

Since 2003, local authorities have advocated for a change from joint and several to proportionate liability. Both the LGNZ submission to the Building Bill (2003) and the Building Act review (2010) and more recently to the Law Commission's review support change. The submission to the Building Act review also suggested a Government backed surety or backstop for warranties.

Local authorities are not unsympathetic to the argument that plaintiffs are unable to fully recover costs when those responsible cannot be found. We cannot however see the logic of the wider community, the ratepayers, having to pay compensation as currently exists under joint and several liability. Communities are, in effect, subsidising poor building practices.

Local authorities providing building inspection services are subject to a strict regime of accreditation to ensure appropriate systems are in place to deliver building services. However, this has not proven to make any substantive difference to the apportionment of costs when subject to litigation.

Building Act Schedule 1 Exemptions

Schedule 1 to the Building Act already exempts a range of building works from consent, and was amended in November 2013 to include further exemptions.

Local authorities can also exempt other works where it is satisfied that the work will comply with the Building Code or, if the completed work does not comply with the building code, it is unlikely to endanger people or any building, whether on the same land or property.

Some local authorities support a discussion about other activities that could also be exempted under the Schedule.

Solutions:

1. LGNZ supports a change from joint and several liability to proportionate liability.
2. Consider further exemptions under Schedule 1 to the Building Act.

Certification for Building Products

CodeMark certification for building products is intended to provide certification of product used by the industry. Some local authorities consider the current CodeMark certification scheme for building products is under-utilised by the building industry due to the high costs and lengthy timeframes it takes to get an application approved.

CodeMark presently appears to be difficult to obtain and not competitively priced. MBIE could consider a model that is competitive when compared with other testing agencies and accordingly generates greater industry support. A single high quality product testing regime could be mandated but it needs to be affordable, and provide for quick turnaround in terms of approval.

Where products have not been certified, it falls onto BCAs to spend more time and resource in processing building consents because they do not have complete assurance of products/systems.

Solutions:

1. Consider a model of certification that is competitive when considered against other testing agencies
2. Consider mandating a single high quality product testing regime that is affordable and provides for quick turnaround.

Resource management/planning

Introduction

LGNZ considers the most significant issue with respect to the urban planning system is the existing legislative framework which prevents/constrains strategic planning due to duplicative processes and relitigation between the RMA, the LGA and the Land Transport Management Act (LTMA). The relationship between these statutes and the relative weighting of plans prepared under each needs to be reviewed. The discussion that follows focuses on the resource management framework under the RMA.

Our proposition is that New Zealand needs a resource management system that is agile, and reduces churn, cost and time. We appreciate that a RM Amendment Bill is likely to be forthcoming and the matters identified below have been identified by the local government sector as the priorities for amendment with regard to plan making; resource consenting and compliance and enforcement within the current resource management framework.

Some of the matters identified need further consideration and will be part of consultation that LGNZ undertakes in relation to the LGNZ RM Reform Project we have initiated.

Plan making

The ability to quickly provide certainty in plans is essential for business, for communities and for all stakeholders. The process should take months, not the years it currently does. In the case of the Resource Management Act, plans and plan changes can take up to seven years and sometimes longer to be approved. Plans may become operative in part, pending appeals to the Environment Court (and beyond). Local Government Act processes on the other hand can deliver long term plans, annual plans and bylaws covering a wide range of local authority regulatory and service delivery functions in a matter of months.

Plans are irrelevant if they are not timely. Our planning processes can't keep up with the reality of changes in the environment in which they are being placed. If we can't get plans and plan changes through the system to meet a fast changing world then these plan making processes themselves become counterproductive and part of the problem, producing adverse outcomes. Plan agility (or the lack of it) is a very serious problem and needs to be fixed. We suggest the process should be brought within the timeframes of almost every other decision-making process of central and local government.

The process of plan-making involves the affected community, where private or public access or use rights to resources are made. Collaborative processes, the evaluation requirements under section 32, and the testing at hearing of the issues and plan proposals using accredited commissioners, all support the proposition that as council policy-making capabilities are maturing there is a weakening case for the Environment Court's de novo hearing.

We consider that removing the Environment Court from de novo or merits-based hearings in the plan-making process is the most important change needed. The opportunity for a judicial review that the local authority went beyond its legal powers when making a decision, arguably provides adequate safeguards for the public.

The removal of this power would save significant costs for plan-making and supports the principle of local democratic accountability. Currently, there are difficulties with the Court's resolution of disputes over intangible value judgements, particularly in the domain of public resource values, but also in dealing with trade-offs over aesthetic effects of exercising property rights, such as disputes over amenity value and landscape. The concern has been that plan quality and justification may be compromised by or with local council decision-making, but it is time to allow full substantive decisions to rest with communities through their councils.

Removing plan-related merit appeal rights to the Environment Court would need consideration of:

1. The role of the further submission process – to address how parties affected by submitter requests can become involved if they have not submitted;
2. Function of mediation, especially before decisions are made on any proposal;
3. Use of expert witnesses, as these are often not engaged until Environment Court proceedings; and
4. Accreditation and experience of hearing panels.

Approval of Regional Coastal Plans

The value of the requirement for the approval by the Minister of Conservation for regional coastal plans is questioned by some local authorities. Since the Marine & Coastal Areas (Takutai Moana) Act 2011, the status of the Crown and the Minister of Conservation over all coastal marine areas has changed. Significant delays to achieving operative status of regional coastal plans are associated with the need to have the Minister (rather than the regional council itself) approve these plans. The Minister can submit at notification, and participate in plan-making to represent conservation (rather than landowner) interests in the coastal marine area. However, regional councils report limited or no amendments requested by the Minister for coastal plans – begging the question as to whether the Minister's role is necessary.

Fast-track plan amendments to optional plan provisions

The provisions of regional and district plans now fall into one of two types – mandatory or optional content. For optional content, councils should have much greater freedom to amend such provisions without having to follow the full Schedule 1 process. These provisions include issues statements; method statements (other than rules); policy or rule explanations; anticipated results; effectiveness monitoring indicators; and introductory, scene setting text for which it would be efficient to simply update or amend the text content in an agile manner without inviting contests over these sorts of plan provisions, where there are no effects on resource use rights created by such amendments. This can be achieved by amending Clause 16(2) and 20A provisions, with careful definition of the limits of the effects of such amendments.

Alignment of plan provisions with national environmental standards

The RMA currently limits the ability to amend a plan to make it consistent with a National Environmental Standard (NES). Sections 43B and 44A are worded to allow amendment of "rules" which conflict with any NES, but any amendments to objectives, policies or other plan provisions which 'conflict' with the same NES still need to go through a Schedule 1 plan change. The result without a change to the plan is that rules no longer in conflict, but the plan's objectives and policies become disconnected.

Overlap between the Resource Management Act, Hazardous Substances and New Organisms Act (HSNO), and Heritage New Zealand Pouhere Taonga Act (HNZPT)

There is the potential for duplication of regulation under the RMA, under the HSNO Act and the HNZPT Act. The latter pieces of legislation contain specific regulatory regimes for hazardous substances and archaeological sites and there is the potential for councils to duplicate those regimes through land use rules. The functions of councils could be altered to remove this potential while still providing individual councils the discretion to regulate land use activities in these areas if there is a local need.

Solutions:

1. Remove the ability to appeal RMA plan and policy decisions to the Environment Court; appeals only allowed on points of law.
2. Reconsider the role of the further submissions process in RMA plan and policy development requirements and whether there is value in adding a filter to specify when further submission are required.
3. Remove the requirement for regional coastal plans to be approved by the Minister of Conservation.
4. Enable changes to plans through a fast-track process if new versions of standards/models are introduced.
5. Enable amendments to regional and district plans through a fast-track process where the content is optional.
6. Enable a simplified plan amendment process to enable objectives and policies in subordinate plans affected by an NES to be aligned with the NES.
7. Amend the functions in sections 30 and 31 to reduce the potential for duplication of regulation between the RMA and the HSNO and HNZPT Acts.

National direction

The Minister for the Environment has signalled an increased focus on providing greater national direction to local authorities. A Plan Template could be an important part of this central direction and this proposal needs to be fully considered and implementation costs understood. We are interested in the scope of the Plan Template and are keen to explore this. Transitional arrangements (timing and process to give effect to the template) will be critical. Having a national set of definitions could be more effective than a Plan Template, depending on the implementation issues identified with the Template.

The forward agenda for forthcoming National Policy Statements and National Environmental Standards should be set with local government. Setting the schedule for these as a partnership between central and local government will achieve the greatest results. This will ensure the instruments are workable and meet the priorities for local government.

Solutions:

1. Local government should help set the priorities for national direction: National Policy Statements, National Environmental Standards and the scope of any Plan Template.
2. The arrangements for the transition to a Plan Template or standardisation should minimise the need for local authorities to initiate changes to their plans (minimising cost and uncertainty) through the Schedule 1 process.

Private plan changes

Private plan changes can be a useful mechanism for enabling the private sector to respond to development opportunities; however they can clog up the planning system and put councils into a reactive position, rather than a proactive one. We support councils having the ability to reject private plan changes in specific circumstances.

This would contribute to a reduction of: costs to all parties associated with plan-making; delays and uncertainties of outcome; complexity of administration at the consenting stage. Re-litigation of issues that have recently been through a

plan-making process would be avoided and councils can be more proactive in plan-making, as their resources are not diverted to plan changes on topics that have recently been through a plan-making process. Councils would be able to focus on taking full plan reviews through the plan-making process without having to divert resources from changes to or reviews of operative plans onto private plan change requests.

Solutions:
Provide local authorities with the ability to reject requests for a private plan change where:

1. the topic or land subject to the plan change has been through the Schedule 1 process of the RMA within the past five years;
2. a full plan review or relevant plan change on the same subject matter is being undertaken through the Schedule 1 process.

Combined plans for unitary authorities

For some time unitary authorities have considered that the requirement to have a Regional Policy Statement (RPS) is redundant. Because the territory of a unitary authority covers a single district that is the same as the region, the over-arching RPS is not necessary. As the RMA stands, for unitary authorities, unnecessary duplication of regional policy statement provisions and district provisions is required. It is necessary to have a mechanism to identify within the combined plan, those provisions that have the status of a RPS provision.

Solution:
1. Remove the requirement for unitary authorities to have a separate Regional Policy Statement.

Legal effect of rules sections 86A-86G RMA

Sections 86A-86G determine when proposed rules have legal effect. These provisions are unduly complex and difficult for councils to administer and the distinctions for those with early and those with delayed effects are arbitrary. In addition, the link between policies and rules is severed with these provisions. There is little point in having a new policy with no effective rules, e.g. hazard policies. Where rules deregulate, these statutory rules prevent them having effect from notification.

The drafting of these rules means that time and money is spent interpreting the section and there is a high risk of interpreting the section wrongly. It is illogical to treat rules and policies differently – they are drafted as a package and should be treated as such.

This unsatisfactory situation is especially important for integrated unitary plans that contain regional, regional coastal and district plan rules. The provisions in the RMA mean that unitary rules have effect at different times and for integrated rules addressing both s30 and s31 functions it gets even more complex. The provisions have created significant implications for rule drafting and the communication of the status of rules to the community. There are quite unnecessary transaction costs in gaining Court orders to give rules early legal effect.

Solution:
1. Both rules and policies should have legal effect at notification. A return to the pre 2009 amendment (where all polices and rules had legal effect at notification) is the referable alternative.

Infrastructure planning

There is a disconnect between LGA 2002 strategic infrastructure planning and the maximum five year term for long-term protection of strategic infrastructure under the RMA. Many local authorities develop structure plans that go through a reasonably rigorous exercise to confirm land use and associated transport network provisions for adoption in the District Plan. This process however is not sufficient to avoid development or land use activities that constrain or inhibit the delivery of future strategic transport corridors.

Typically, the RMA designation process is then used to secure long-term planning provisions for these corridors (arterial networks). The current standard for lapse period (maximum 5 years) limits the ability to protect and plan for long-term strategic infrastructure. The existing provisions lead to cost uncertainty under the RMA process to plan and protect long-term strategic infrastructure.

Solution

1. That the RMA designation provisions be simplified and the minimum term increased.

Resource consenting

Notification determinations

Notification decisions require too much focus under the RMA. From the perspective of both applicants and interested parties, much turns on the decision (e.g. costs, timeframes, certainty and control of outcome, rights of input). Through applications for judicial review, notification decisions are a source of litigation. Although the actual number of applications for judicial review is very small, the potential threat of litigation can drive complex, repetitive and (relative to the actual effects of many proposals) often excessive reporting for all applications at the s95 stage. Notification determinations require officers to undertake effects assessments at the s95 stage that overlap with the substantive assessment.

The issue is not the decisions themselves but the time, effort and cost of making notification decisions and how this might be simplified. Consideration needs to be given to achieving greater certainty about when an application should be notified (or not), providing greater certainty for applicants and reducing the time spent on deciding on notification on a case by case basis, and documenting that decision.

Solutions:

1. Consider whether the RMA should require plans to state whether an activity is to be notified, limited notified or non-notified.
2. Amend the RMA to enable plans to state that an activity can be limited notified.
3. Create a new category of consent that enables a district plan to identify an activity as permitted, subject to affected party approval being provided.

Substantive decisions

Currently, Part 2 of the RMA is considered at both the plan making and consent stages. Arguably this is duplicative, and consideration should be given to whether making decisions on resource consents subject to Part 2 in s104 is necessary. Primary emphasis should be given to the preparation of clear, directive policy, taking into account Part 2, as part of the plan process.

Plans should continue to be prepared subject to Part 2. However, considerations at the s104 consenting stage (for controlled, limited discretionary and also potentially discretionary activities) could be limited to those plans, and any relevant NPSs and NESs. This change would reduce duplication of effort at plan-making and resource consent stages, saving time, effort and money.

This would be a significant change and we have not achieved a clear position of support on this with our member authorities. We would like to see the proposition tested as part of the next round of amendments.

Solution:

1. Consider whether the requirement to consider Part 2 matters at the consenting stage should be removed.

Fast track consents

Consent authorities have 20 working days to process non-notified applications for resource consent. There is no statutory encouragement to process those straightforward applications that can be processed more quickly. Identifying suitable activities that generate *minor* effects cannot easily be prescribed in law given the need to take into account risk and the specifics of an application and the receiving environment. The discretion to identify which applications should be subject to a fast-track process should rest with a council. If this change is to be pursued there will be resourcing requirements needing to be considered.

Solutions:

1. Consider requiring consent authorities to develop and publish policies and procedures for fast tracking minor consents (with a target of 10 working days).
2. Make clear in law that these applications are processed without recourse to notification.

Compliance and enforcement under the RMA

There is a network of compliance and enforcement officers across the regional and unitary councils who meet regularly to discuss common issues and best practice. These meetings have identified legislative matters concerning compliance and enforcement that have long caused difficulties for those charged with exercising their functions under the RMA; inevitably where there is a difficulty or complexity there are unnecessary costs for parties involved. They include:

1. provide for cost recovery for monitoring activities that do not require consent;
2. allow the Environment Court to issue an enforcement order to change or cancel a resource consent as a result of ongoing or repeated non-compliance;
3. remove the need for a police officer to be present to execute a search warrant;
4. remove the need for exhibits to be retained in the custody of a police officer;
5. make it unlawful to provide insurance against RMA fines, in a similar manner to Health and Safety legislation;
6. increase infringement fees, and introduce higher infringement fees for corporate offenders;
7. amend the provisions regarding the duty to give information;
8. enable local authorities to remove unauthorised structures where ownership is unable to be determined;
9. increase the penalties for someone who commits an offence under section 338(3) – the current maximum is too low to be an effective deterrent or for councils to incur an expense in prosecuting; and
10. reduce the maximum penalty of imprisonment for an individual to 12 months but increase the maximum financial penalty for an individual to $600,000.

These detailed recommendations are included as Appendix A.

Other matters

Health and Safety

Volunteers

Councils are major users of volunteers, whether to clean up regional parks, coastlines or to assist run a local festival. Regulations that create obstacles to the use of volunteers will increase costs and potentially diminish services.

The Health and Safety Reform Bill treats all volunteers as workers like any other under the Reform Bill. Volunteers will be owed duties as "workers", and local authorities may be liable for any failure to comply with these duties. This is a fundamental change from the current position under the Health and Safety in Employment Act 1992 (HSE Act). This proposed change under the Reform Bill will have a significant impact on local authorities' operations, as local authorities engage vast numbers of volunteers for various types of volunteer work. This ranges from school groups who undertake streamside planting, and other people who set trap lines, count birds and carry out ecological assessments. Often, the work carried out by volunteers takes place in semi-remote locations (for regional councils in particular), and particular concerns also arise due to the aging of many volunteer groups. Other councils use volunteer effort to help with event management.

Such a change will create perverse outcomes as local authorities will have to reconsider their use of volunteers. Due to the nature of the work that many of these volunteers do, environmental projects in particular will not be capable of being as well resourced as they are at present. This is especially relevant in relation to irregular events that local authorities organise (which include stream or beach clean-ups and tree planting, among others), where the need to treat volunteers as workers is likely to have a negative effect on the programmes themselves, as well as on the subsequent benefits that these programmes provide to local communities.

LGNZ wholly supports the need to owe all volunteers a duty of care, but it considers that the correct balance between the imposition of a duty and the potential to incur liability had been achieved by the HSE Act, and that there is no reason to deviate from the current arrangement. Maintaining this balance would require removing the potential for liability in relation to volunteers who do not carry out particular kinds of regular, on-going work that is essential to the business of the person(s) engaging them.

The other matter re volunteers is that all volunteers, and contractors and subcontractors (and their employees), are currently treated by the Reform Bill as workers who need to be consulted like any other. The nature of engagement required should be amended to account for the differing types of relationships that PCBUs will have with certain volunteers, contractors and subcontractors (and their employees) so as to avoid imposing liability where there is no managerial or operational control, and to reduce unproductive duplication of duties among PCBUs.

Solution:

1. Apply the framework for volunteers under the HSE legislation to the Health and Safety Reform Bill.

Roading and footpaths

Road Stopping - Local Government Act 1974

The legislative process under section 342 and Schedule 10 of the Local Government Act 1974 which provides for the stopping of roads and allows for the transfer to adjoin land is unduly cumbersome and overly bureaucratic. The process should be streamlined to make it more efficient.

Solution:

1. Amend the process under Schedule 10 to streamline the process and give the local authority greater flexibility to stop roads provided the right of public access is not unreasonably constrained.

Road encroachments

Road encroachments involve authorising the private occupation of public land, often involving an annual fee. Common examples in residential areas of encroachments are for garages and parking structures on legal road.

Encroachments were originally covered by section 129 of the Public Works Act 1981 and are now technically covered by section 357 of the LGA1974. However, there is no proper reference or precedent established for the use of this clause to enable encroachments to be approved by a local authority. The ability is inferred only form the words "every person commits an offence who, not being authorised by the council….encroaches on a road."

The LGA1974 gives councils the power to grant specific encroachments under sections 338,341,344 of the LGA 1974 (including for pipes underneath a road, gates, airspace above a road). Various legal opinions support or oppose that section 357 gives local authorities the power to approve encroachments beyond these specifically referred to. The uncertainty about the law leads local authorities to treat differently and at varying costs to the community and property owners, how they manage obstructions of the legal road through private occupation. This is important for people involved in providing certainty of use, for example when a property transaction is involved.

Solutions:

1. Clarify what types of encroachment may or may not be permitted by the local authority.
2. Consider how historical anomalies can be addressed.
3. Clarify the basis for fee setting for encroachments.
4. Clarify the process by which an encroachment may be authorised by a local authority.
5. Address obligations of new property owners for historical encroachments.

Reserves Act 1977

The Reserves Act is out-dated, overly restrictive and there is room for efficiency gains.

Currently the public notification provisions of the Act require publication in the local newspaper. In the contemporary online/social media environment, the value of formalised Public Notices in newspapers is diminishing. Members of the public increasingly go online for information, and to make comment on plans or reviews being undertaken by councils. Social media can prove effective in relaying information on Reserves Act matters to the public and stakeholders. The Act should recognise modern means of communication and provide greater flexibility to avoid costly public notification.

There is room for efficiency gains. For example:

- mandatory requirements for public notification. Local authorities have consultation obligations under the Local Government Act 2002 (LGA). The Act should provide discretion for local authorities to decide on the need for

public notice based on merits of the case, to avoid duplicating consultation, saving time and money.

- the requirement to classify all reserves, including reserves created on vesting as part of subdivision under the Resource Management Act 1991. The requirement to continually classify reserves on vesting creates an administrative burden on local authorities and an unnecessary duplication of effort that could be avoided by automatic classification on vesting for the purpose for which they are vested.

In many cases local authorities do not have the ability to uptake opportunities that maximise use and enjoyment of reserves and provide community benefit. By way of example, the provisions on what can be done on the different types of reserves and the powers available to the local authority for those types of reserves are overly restrictive, in particular provisions relating to commercial activity where the test does not anticipate a benefit wider than a particular reserve, and leasing for local purpose reserves.

This restrictiveness does not enable councils to initiate opportunities to partner with private enterprise, or to enable commercial activity on reserves, which may encourage use and enjoyment of reserves and/or benefit the wider community. In the current environment where funding and rates are issues, there is lost opportunity for a council to use reserve land for commercial purposes to generate more revenue whilst maintaining the integrity of reserves.

Restrictions on use and powers should be maintained to not lose sight of the tenor of the legislation but restrictions should be loosened to provide greater flexibility and opportunities where there is wider community benefit, particularly in relation to commercial activities on reserves.

In some circumstances, there are council-owned recreation or local purpose reserves that are no longer required. Currently the Minister holds the power to revoke the reservation over such reserves. These should be able to be more readily disposed of, without reference to the Minister and noting council's consultation obligations under the LGA. This would provide efficiency gains and provide local authorities more autonomy to make decisions in relation to reserves owned by the council. We support retention of the Ministers power for a decision on other reserve classes or non council-owned reserves.

The process for revoking reserve status over land no longer required for reserve purposes is cumbersome and overly bureaucratic. The process should be streamlined to make it more efficient. The process should be amended to give greater flexibility to the local authority to decide how much reserve land is needed and avoid having assets that are in the wrong place or no longer providing value for money. The local authority should also be able to make the decision without having to consult the Director General of Conservation or require the agreement of the Minister of Conservation.

Solution:

1. Review the Reserves Act to:

   - provide for modern means of communication;
   - identify changes that will achieve efficiency gains and avoid duplication of decision-making and process; and
   - provide greater flexibility and opportunities for local authorities to enable greater use and enjoyment of reserves.

Local Health and Hygiene/Public Health Bylaws

Hairdressers, tattooing, body piercing, hair removal, indoor tanning and pedicure/manicure

The Health Act 1956 sets out the general powers and duties of local authorities in respect of public health. These include the duty of every local authority to "improve, promote and protect public health within its district".

Currently a range of related services and practices such as hairdressers, tattooing, body piercing, hair removal, indoor tanning and pedicure/manicure are not regulated by legislation at the national level. Accordingly, various councils across New Zealand have separately developed and implemented bylaws to regulate these services and practices. Auckland Council, for example, has recently implemented the Health and Hygiene Bylaw and Code of Practice 2013 to ensure that commercial services, and premises, like tattooing, body piercing, hair removal, indoor tanning and pedicure/manicure are not potentially harmful for the health of the community.

The consequences are inefficient bylaw development across local authorities; varying bylaw content across the country on these matters; and inconsistent local public health regulation of associated industries.

The registration of hairdressers with local authorities is required under the Health (Hairdressers) Regulations 1980 and Health (Registration of Premises) Regulations 1966, regulations which are both pursuant to the Health Act 1956. The need, however, to have to register hairdressers for public health reasons has been questioned. The products used and practices employed do not pose a health risk proportionate with the need to regulate.

Solutions:

1. New national regulation should be provided to clarify and standardise the regulation of services and practices with a public health component.
2. The Health (Hairdressers) Regulations 1980 should be reviewed to reduce costs to applicants and regulators.

A Standard for the remediation of methamphetamine-contaminated properties

Local authorities and stakeholders including central government, the real estate industry, the insurance industry, and those involved in testing for and remediating methamphetamine contamination have identified the need for a Standard that covers: Testing, evaluation and remediation of methamphetamine-contaminated properties. The lack of consistency and certainty has been identified as an issue with health effects for parties (often unsuspecting) having contact with contaminated property.

LGNZ has led a process across diverse stakeholders to seek funding to develop a Standard. Ideally, the Standard would be funded and led from Central Government, while closely involving the stakeholders who would use or be affected by the Standard.

Solution:

1. A new national Standard for the testing, evaluation and remediation and methamphetamine- contaminated properties.

Liquor licensing

Appeals

The process to adopt a provisional alcohol policy and the appeal provisions on the provisional alcohol policy are complex, duplicative and unnecessarily expensive for all parties. There is scope to make this process simpler. Sections 83 to 86 of the Sale and Supply of Alcohol Act 2012 – creates a two step process in order to resolve appeals to a Provisional Local Alcohol Policy (PLAP) rather than a one step process, even when agreement is reached between all the appellants. The Authority (ARLA) has recently issued a Practice Note which outlines this. In summary ARLA will only deal with a resubmitted PLAP if:

1. All the parties agree with the amendments; and
2. All submitters on the elements which were amended have been provided with a reconsidered PLAP; and
3. All parties and submitters have time to join as s 205 parties; and
4. No one has joined as a section 205 and opposes the amendments; and
5. ARLA considers the changes are not unreasonable in light of the object of the Act.

In all other circumstances there will be a reconvened hearing.

Section 86(1) of the Act suggests that anyone who made a submission during the special consultative procedure on the draft LAP may appeal against a resubmitted element of the PLAP as a section 205 party under the Act. The whole process is a concern to councils because the additional re-consultation step not only increases the time and expense for all parties but also allows the resubmitted element to be subject to a wide range of appeals, from any person who made a submission on the original draft LAP to that appealed element, and this person can then join the proceedings. We request that this process be reduced and that these sections of the Act be made clearer.

Further, section 89 of the Sale and Supply of Alcohol Act 2012 deals with the situation where a council's adopted policy with respect to maximum trading hours differs to the national trading hours or has a one way door policy. A council is required to take these elements of the Policy to the Minister of Justice to be tabled before the House of Representatives and sent to the Regulations Review Committee to review.

Solution

1. Where a council has secured the agreement of the appellants and other parties to the appeals on its resubmitted PLAP, it is appropriate that the Authority can make it decision in private without a further re-consultation step to the submitters to the draft LAP; and
2. Revoke section 89 as this has already been decided upon by the Authority.

Obtaining licenses under the Sale and Supply of Alcohol Act

Members have raised concerns about the cost of special licenses and the fact that at present costs are incurred because there is no ability to delegate decision-making to staff. All licenses are granted through the District Licensing Committee, even uncontested applications.

Solution:

1. Allow for delegation of decision-making powers to staff of the local authority.

Applications for a Manager's Certificate (section 221)

Applications for a Manager's Certificate have to be decided by the Licensing Committee, either by a chair or a three person Committee. This adds an extra step in the process which takes longer and costs more (having to pay for the costs of the Chair of the DLC). This also applies to renewals of certificates.

Solution:

1. Allow delegated powers to the Secretary of the Licensing Committee to decide applications that are not opposed by the Inspector or Police. Alternatively, allow Renewal Applications of Manager's Certificates that are unopposed to be decided by the Secretary.

Applications for a Temporary Authority (section 191)

Applications for a Temporary Authority have to be dealt with by the full three person District Licensing Committee. They cannot be decided by the chair alone like some other unopposed applications can. Having to convene a three person DLC at short notice when a business changes hands results in time pressure and additional costs for the three members' time. Delegating to staff or allowing the chair to decide alone as a quorum of one would be more efficient and cheaper.

Solution:

1. Amend section 191(3) to include applications for a Temporary Authority.

Fluoridation

Under existing law the decision on whether or not to fluoridate drinking water lies with territorial authorities. Implementation is proving costly as council decisions are increasingly under challenge from interest groups. South Taranaki District Councils, for example, has recently successfully defended a judicial review that sought to over turn its decision to continue with fluoridation. The cost to the council and local citizens was substantial.

Local authorities, through the LGNZ Annual General Meeting in 2014 voted to ask the Government to shift the decision for fluoridating water to the Director General of the Ministry of Health. We have since briefed the Associate Minister of Health on the issue and have agreed to advance it together

Solution:

1. Shift the decision for fluoridating water to the Director General of the Ministry of Health.

Derelict Properties

Councils are regularly faced with the issue of derelict buildings with requests for action coming from many sources, including neighbours and health officials. Buildings in serious disrepair not only cause neighbours distress they can be a risk to health and a potential fire hazard, not to mention a site for criminal behaviour. They are a cost to communities and councils. Yet councils' powers to demolish derelict properties are quite constrained.

Under current legislation, territorial authorities are limited in the actions they can take to compel owners to repair their properties, clear overgrown sections and remove refuse, or in worst cases, have them demolished. Rotorua Lakes Council, for example, has brought a case to our attention where a particular derelict property has caused the council to incur costs in excess of $60,000 on consultants' reports and legal advice over a period of five years as the councils lacks the ability to simply require its demolition.

Solution:

1. Strengthen councils' powers to deal with derelict properties to reduce administrative costs and improve community safety.

Animal control (Dog Control Act 1996)

Section 10 Requirement to establish a policy on dogs

Section 10 of the Dog Control Act 1996 requires councils to establish a policy on dogs, in accordance with the special consultative procedure set out in the Local Government Act 2002. Section 10 outlines what needs to be included in every policy. A TA must give effect to this policy by making the necessary bylaws and any bylaw cannot be inconsistent with the policy. The Local Government Act 2002 was amended recently with regard to use of the special consultative procedure.

Section 20 of the Dog Control Act specifies that a bylaw must be developed, like the policy, via the special consultative procedure. This means that a TA must consult twice using the special consultative procedure. The provisions of the Dog

Control Act should be aligned with the recent changes to consultation provisions under the Local Government Act 2002.

Section 10A

Section 10A requires councils to report on their dog control policy and practices and send a copy of this to the Secretary for Local Government. We are aware that many councils do not comply with this requirement. As no national data can be extracted from the reports, their value is questioned.

Section 42 Offence of failing to register dog

Section 42 creates an offence for failing to register a dog for the current registration year. Sometimes an owner is caught with a dog which hasn't been registered for the past few years and this can generally be confirmed through the National Dog Database. Councils have different practices about whether to charge for the years of non-registration. The problem with charging for the years of non-registration is because there is no evidence of the past ownership. Section 42 should clarify this and state that a dog owner is only liable for the dog registration fees during the current registration year.

Section 71 Retention of dog threatening public safety

Under section 57(5) (a) a Dog Control Officer can seize and take custody of a dog which has attacked. It is common practice to do this in the first instance to immediately eliminate the threat. In order to retain the dog under section 71 the following must apply:

a) The dog was seized under section 57
b) The dog owner is to be prosecuted
c) The owner has claimed the dog and paid the fees
d) The TA is satisfied that the release of the dog would threaten people, stock.....

A council is not permitted to keep the dog in retention unless all a), b), c) and d) are met.

Before making a decision to prosecute under b), an investigation should be undertaken. However the dog owner generally wants their dog back immediately. If a council issues a notice of retention under section 71 it may be concluded that you have decided to prosecute before you have completed the investigation. Councils need the ability to hold the dog for 72 hours to conclude whether or not the owner is to be prosecuted.

Micro-chipping

Many dogs are implanted with a microchip by a veterinarian. The owner is often charged an additional fee to have their information recorded on a database. What most dog owners don't realise (and are not advised) is that this is the companion animal council database, not the national dog database.

A change to the legislation which would be helpful is that implanters must notify their local Council of the particulars of dogs implanted by them.

Impounding of stock

Wandering stock create a problem for local authorities who do not have the enforcement tools to deal with it. An infringement schedule is required to enable local authorities to issue fines to the owners of wandering stock.

Solutions:

1. Align the provisions under the Dog Control Act with recent amendments to the consultation provisions under the Local Government Act;
2. Reconsider the value of requiring councils to report on their dog control policy and practices to the Secretary for Local Government;
3. Clarify in section 42 that a dog owner is only liable for the dog registration fees during the current registration year;
4. Reconsider the requirement for councils t report under section 10A of the Act;

5. Amend section 71 to enable councils to hold a dog seized under section 57(5)(a) for 72 hours to conclude whether or not the owner is to be prosecuted;
6. Require implanters of microchips to notify the Council of the particulars of dogs implanted by them; and
7. Provide an infringement schedule to enable local authorities to fine the owners of wandering stock.

Local Government Act

The Pre-election report (LGA2002)

The pre-election report was introduced in 2010 to provide voters with summarised financial information to inform their voting decisions. It became mandatory for all councils prior to the 2013 elections. The LGA amendment 2012 required that councils prepare and publish prudent financial benchmarks annually. The information provided by the benchmarks is more accessible and meaningful than the information provided by the pre-election reports. Anecdotal evidence suggests that the pre-election reports had little to no impact on the 2013 elections and were also used by some councils as promotional documents.

Solution:

1. Remove the requirement for a pre-election report.

Long Term Plan Audits (LGA2002)

The audit of draft and final long term plans was introduced in 2002. It was introduced to provide citizens with confidence that the assumptions on which councils made their long term planning and financial forecasts, such as population changes and asset condition, were robust. The audit had an immediate and long lasting impact on the quality of councils' long term planning.

The same rationale does not apply to completed annual and Long Term Plans. Once audited draft plans have been subject to the consultation process the final content is matter purely for the governing body. The audit view is simply redundant and an unnecessary expense and draws auditors into a territory which is beyond their scope as auditors.

Solution:

1. Remove the requirement for an audit of final long term plans.

Infringements (LGA2002)

Bylaws made under the LGA 2002 are designed to protect the public from nuisance; protect, promote and maintain public health and safety; and minimise the potential for offensive behaviour in public places. The LGA 2002 also allows for regulations to be made prescribing breaches of bylaws that are infringements under the Act, the level of infringement fees (under $1000) and infringement notices.

Since 2002 when the Act was passed no regulations have been made, due to an issue with the drafting of section 259. Where breaches of bylaws fail to provide for a council to issue an infringement the council can only pursue the matter to the District Court. If the bylaw breached is one that only allows for the matter to be taken to court it is often not proceeded with for the following reasons:

- The cost (to council and ratepayers) to proceed to court;
- The minor nature of the breach is outweighed by the formal court approach; and
- The potential for negative publicity for a council seeking a District Court prosecution for bylaw breaches that are nuisance.

Solution:

1. Amend section 259 to correct the original drafting error and enable regulations to be made so infringements can be issued to enforce bylaws.

Local Government (Rating) Act 2002

Rating resolutions

The enactment of a rating resolution, under the Local Government (Rating) Act 2002, is the procedure through which local authorities set their rates. A rating resolution must be set "in accordance with" a council's Funding Impact Statement and if there are discrepancies a council may have to reset its rates or seek validating legislation from parliament. In the last year there have been three validating bills. Preparing a Funding Impact Statement and a Rates Resolution both of which contain the same information (except for dates on which rates must be paid) is simply a duplication of resources and creates opportunities for error that are simply unnecessary.

Solution:

1. Assess the need to prepare both a Funding Impact Statement or remove the requirement to adopt a rating resolution.

Mandatory Rating Exemptions

A particular set of regulations that result in property owners paying more in property rates than they otherwise would are found in Schedule 1 of the Local Government (Rating) Act 2002. These regulations specify categories of properties which are defined as non rateable. By far the largest group of non rateable properties, such as schools, hospitals and the conservation estate belong to the Crown.

There may be a rationale why certain types of properties should be exempt from local property taxes; unfortunately the majority of properties in Schedule 1 are not easily justified. Internationally, and in New Zealand's case until the mid 1980s, local authorities responsible for areas that include large tracts of conservation land is held receive payments in lieu of rates – reflecting the difficulty of valuing conservation land.

Solution:

1. Enable local authorities to rate property which is currently exempt.

Local Authority Members Interests Act 1968

Predetermination

In a successful democracy candidates stand, and are either elected or not, on the basis of a platform explaining the policy and a programme changes they intend to make if successful. Unfortunately many candidates find, once elected, that they cannot take part in decision-making processes to implement the policies that they stood for because they are regarded as predetermined. This has an erosive effect on local democracy and discourages talented people from standing but most of all it is expensive for councils as legal advice is frequently commissioned to clarify the law and often situations end up in a code of conduct hearing. Hearings are not only costly they are a major distraction and can undermine confidence in local democracy.

The problem stems from the Local Authority Members Interests Act 1968, which is extremely out of date and fails to provide effective guidance on the issue of non-financial conflicts of interest.

Solution:

1. Review with urgency the Local Authorities Members Interests Act 1968.

Fencing of Swimming Pools Act 1987

Fencing of spa pools

The Act requires that spa pools are required to be fenced, even when they have a lockable lid. Section 6 allows for special exemptions to be applied for but it requires a "resolution" of Council (or by delegation a resolution of a committee). This process is costly to the property-owner because of the lack of delegation. The TA should be able to delegate the decision to staff. It would also be helpful if the TA could determine that a general exemption could apply in certain situations and fast-track any such applications.

Solutions:

1. Amend the Act to exempt spa pools with a lockable lid from the Fencing of Swimming Pools Act 1987; this amendment has been discussed since 2006 and again in 2013 and has still not been implemented; and
2. Allow for delegations of decision-making to staff.

Amusement Device Regulations 1978

Clause 11

The need for a local authority permit is superfluous and the fee recovery of $10 for the first device and $2 thereafter does not cover the time involved, therefore the general rate subsidises the process. The regulations duplicate regulation by other public agencies.

Solution:

1. Review the Amusement Device Regulations 1978 and place greater responsibility on Worksafe NZ.

Traffic Control

The relationship between statutes, regulation, rules and bylaws that currently govern traffic controls are very confused. This means the current position of the law regarding traffic controls is ineffective and inefficient. Even legal specialists in the area cannot agree on how they interrelate.

The entire area of traffic control needs to be simplified and streamlined in terms of where the authority to implement traffic controls comes from and how these powers can be delegated. Because of the way the traffic law is currently being interpreted by the Courts, all traffic controls decisions are required to be made in an inefficient and ineffective way. By way of example, an uncontroversial decision to replace a car park with no parking lines to improve sight lines from an intersection requires an officer report to go to a specialist committee of Council to be heard. That committee will then make a recommendation to Council which then considers the matter and makes a resolution. Because of timing of Council meetings, this is a process that can take months. It creates a bottleneck in the process, where basic and necessary traffic control decisions are all held up, pending a Council resolution

Solution

1. Review the legislation governing traffic control to remove complexity and provide appropriate delegations.

Disposal of abandoned vehicles

The disposal of abandoned vehicles (under section 356 of LGA 2002) is a cumbersome process that involves an extended period of time to complete with significant staff time incurred. The Road Controlling Authority (RCA) is required to contact the registered owner and notify them of the vehicle situation and seek the owner's action to resolve prior to removing the vehicle. In the meantime, there are unsightly and often aged vehicles that are in a state of disrepair parked on roadsides adding to nuisance to residents. Many abandoned vehicles are unregistered and do not have a Warrant of Fitness.

Solution:

1. Review this section of the LGA 2002 with a view to reducing substantially the tasks and time needed to complete the process of notification and disposal. There could be specific requirements for situations where:
    - a vehicle is not registered or does not have a Warrant of Fitness and is clearly not wanted or of use to the owner i.e. it has no value; and
    - the vehicle has some value.

Temporary closure of roads

The process to approve the temporary closure of a road is included in both the LGA 1974 Schedule 10 and in the Transport Regulations (Transport Act). The requirements of these two pieces of legislation are different in many aspects.

Clause 11 of Schedule 10 LGA 1974 contains a number of limitations that are restrictive, possibly out-dated and cause administrative problems when objections from affected parties are notified (such as the number of market days in shopping centres cannot exceed 31 in any year). Often objections can be commercially based or subjective and delays or cancellation of events become necessary. In addition, for some decisions, the power for a council to delegate to a chairperson or officer is not provided. There are also risks that a popular community event (such as a parade or celebration) cannot be held as sufficient notice has not been given and it is easy for someone to object. Thus events may be cancelled or become too difficult to progress. The legislation requires that a special council meeting is required to approve a request if the advance notice period as set out in the Transport Regulations is not complied with.

Solution:

1. Review these provisions to streamline the process and provide for appropriate delegations.

Appendix A - RMA Compliance and enforcement provisions

	RMA Section/Issue	Change required	Rationale	Comments
1	S338(4) Statute of limitation	Extend the limitation period for filing a charging document from 6 months to 12 months by changing "6" in section 338(4) to "12" (but keep the wording of s338(4) otherwise).	The current 6 month period can be too short where a complex case is being investigated. All other acts give longer periods e.g. Fisheries Act statute of limitations is two years, Building Act is 12 months.	
2	S36(c) fix charges for the carrying out of the local authorities functions	Provide the ability for local authorities to fix charges for monitoring non-consented activities, such as via the process set out in section 150 of the LGA.	Currently section 36(c) allows local authorities to fix charges only in relation to consented activities. Many council compliance activities relate to unconsented activities, often activities that need consent, but are being carried out without first obtaining consent. Some Councils levy charges under section 150 of the LGA through their LTPs to pay for these activities, however legal advice varies as to whether this is lawful. Some councils are considering requiring consents for some permitted activities, to ensure they are able to recover their costs. The lack of clarity around cost recovery has the potential to reduce regulatory efficiency and result in additional rules being promulgated for minor activities.	
3	S314 – Scope of an Enforcement Order	Amend the section to allow the Environment Court to issue an enforcement order to change or cancel a resource consent as a result of ongoing or repeated non-compliance.	In some circumstances current enforcement mechanisms (INs, PR, ANs, EO) are not effective in deterring consent holders from breaching conditions of their consent. Giving the court the power to suspend, change the conditions, or cancel a resource consent as a result of non-compliance would provide an additional deterrence for persistent non-compliance.	

	RMA Section/Issue	Change required	Rationale	Comments
4	Section 322(1) – Inability to use abatement notices to enforce conditions of resource consent in absence of environmental effects.	Amend section 322 to include a section 322(1)(ba) that states: "[(b)(a) Requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on by or on behalf of that person with any condition of a resource consent:"	Section 322 is currently drafted so that abatement notices requiring people "to do" something can only be issued under section 322(1)(b) where it is necessary for the Council officer not only to prove non-compliance with the consent but also to prove that the action is necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment. Many breaches of consent conditions (e.g. sampling, monitoring and reporting conditions) don't give rise to actual or likely adverse effects on the environment, so it is currently difficult to frame abatement notices to address such breaches.	
5	S335 – Content and effect of warrant for entry for search	Remove the need for a police officer to be present to execute a search warrant	The current requirement is time consuming and cumbersome, and an unnecessary burden on the police. The execution of some search warrants can take ten hours or more (e.g. for surveying unlawful earthworks)	It is well known that Police resources are stretched and become more so as time passes. Availability of Police to be present during the execution of an RMA search warrant can vary from Police District to Police District, from day to day and, due to operational requirements, even from hour-to-hour. This is an unnecessary burden and not shared by like agencies and Acts. For example an Authority to Enter (the Fisheries Act equivalent of a search warrant) can be executed by warranted Fisheries Officers without Police present. An RMA search warrant may require such things as land survey or ecological assessment taking many hours to complete. There is no 'useful' purpose for a Police Officer in these circumstances. If there are concerns about violence and

	RMA Section/Issue	Change required	Rationale	Comments
				aggression by occupants then the Police should be engaged for that purpose, that is their function, but their mere presence as an administrative overseer is cumbersome and not required.
6	S337 – Property seized under warrant	Remove the need for exhibits to be retained in the custody of a police officer.	The current requirement is impractical and an unnecessary burden on police resources. No council in the country is currently complying with this section, despite attempts to engage with police, which demonstrates its impracticality	This is impractical and not carried out to the letter of the law by any regional council. It is for the prosecuting agency to prove chain of custody to an evidential standard, not the Police. This amendment may have already been captured by the Search and Surveillance Act but would be tidy to be accurately reflected in the RMA
7	Insurance for RMA fines	Make it unlawful to provide insurance against RMA fines, in a similar manner to H&S legislation	The deterrence aspects of court fines are significantly reduced when offenders have insurance to pay fines for RMA offending. Common farm insurance packages currently provide insurance cover for fines under the RMA.	On a principled basis it seems wrong to be able to insure against penalty for criminal activity. However, at a practical level, we now have a lot of examples of early guilty pleas and full, immediate payments of fines due to insurance company involvement, ultimately offsetting the cost to the rate payer.
8	S360(1)(BB) Review Infringement notice penalties	Increase infringement fees, and introduce higher infringement fees for corporate offenders. Suggest mirroring the changes that occurred to fines under the 2009 amendments – i.e. increase fine by 50%, and then double them for corporate offenders.	Current infringement notice values are too low to be meaningful particularly for corporate offenders.	Regional Councils express mixed views here. When the RMA Infringement regime was introduced some 15 years ago it was intended to deal with 'minor' offending and the fees were set in statutory schedule.

	RMA Section/Issue	Change required	Rationale	Comments
				Since that time obviously the 'value' of those fees have reduced and the primary act has gone on to recognise an increase in penalties upon conviction particularly for corporate offenders. There is a general support for increasing fines for corporate offenders. One suggestion is to introduce a graduated scale for fines, perhaps increasing related to the offender's history of non-compliance.
9	S22- Duty to give certain information	Include a duty for person B to give details of person A	Currently this section is problematic in situations where a landowner has engaged a contractor, the contractor has committed offences on their behalf, and then left the scene and cannot be identified. Section 22 creates an obligation for the contractor to give information about the owner, but there is no obligation for the owner to give enforcement officers information about the contractor.	A complex, poorly drafted and unhelpful section.
10	Removal of unauthorised structures	Enable local authorities to remove unauthorised structures where ownership is unable to be determined.	Where you can't identify an owner, you can't use EOs or ANs to direct the removal. Enables practical options to deal with such minor structures (e.g. maimais, whitebait stands and small bridges) where it does not justify the cost of apply for an EO.	

	RMA Section/Issue	Change required	Rationale	Comments
11	S338(3) RMA		Increase the penalties for someone who commits an offence against section 338(3) (i.e. obstruction etc.) Currently the maximum is $1500, which is too low to be an effective deterrent or for Council's to incur an expense in prosecuting. HSNO legislation has a maximum penalty of $5000	
12	S339(1)(a) Penalty of imprisonment for individual/right to elect trial by jury	Reduce the maximum penalty of imprisonment for an individual to 12 months but increase the maximum financial penalty for an individual to $600,000.	In 2012 the government intended to remove the jury trial option for all offences where the maximum penalty was less than three years imprisonment (such as RMA offences, Civil Aviation Act offences, Maritime Transport Act offences) but in a last minute compromise to get multi-party support for the Criminal Procedure Bill the government reduced the cut-off point to two years maximum imprisonment. This means a defendant can still elect trial by jury for RMA offences, but that option has been removed for other regulatory offences under the CAA and MTA.	RMA offences are not particularly suitable for juries as juries struggle with the concept of strict liability and the complexities of environmental offending. There have been a number of perverse jury acquittals for regulatory offences of this nature, i.e. RMA offences, MTA offences and CAA offences, which presumably motivated the original changes in the Criminal Procedure Bill. The Courts have been very reluctant to sentence offenders to imprisonment for RMA offences and such sentences have never exceeded three months for the most serious recidivist offenders, so the penalty of two years maximum imprisonment penalty is conceptual rather than real. RMA offending has traditionally been seen as economic offending which are why there are significant maximum financial penalties.

	RMA Section/Issue	Change required	Rationale	Comments
				It was not made clear why the maximum penalty for companies was increased to $600,000 in 2009 but only to $300,000 for individuals, so by making them the same financial maximum would be logical and would remove the jury trial option for RMA.
13	s339B (Additional penalty for certain offences for commercial gain)		Add a section 339B (Additional penalty for certain offences for commercial gain) could be expanded to cover section 338(1) offences. At present it is only limited to section 338(1A) and (1B).	