



"Just another parking ticket"?

Watch out for infringement notices under RMA and OSH.

If you have received an infringement notice from local authority enforcement officers (under the Resource Management Act - RMA) or from Occupational Safety and Health inspectors - OSH- (under the Health and Safety in Employment legislation) and thought this was just like receiving another parking ticket, think again. Our experience is that infringement notices under RMA and OSH deserve to be treated with much greater care. Here's why.

Many people have the experience of receiving an infringement notice for a minor breach of the law. The most common example is a parking ticket issued by a parking warden for breach a Council's parking bylaws. The infringement notice procedure (issuing "a ticket") provides a quick and cost effective means of enforcement for minor criminal breaches of the law. This procedure enables the enforcement agency to pursue minor breaches of the law without having to lay charges in Court. From the enforcement agency's perspective, this will often be more efficient than prosecuting in the District Court, especially for minor offences which are not serious.

As a result of changes made to the Resource Management Act in 1999, and more recently to the Health and Safety in Employment Act, amended in 2004, local authority enforcement officers (under the RMA) and OSH inspectors (under the Health and Safety in Employment legislation) now have the ability to issue infringement notices for RMA and OSH breaches.

Under the RMA, local Councils are using the infringement notice procedure much more willingly. Many Councils find that it is more cost effective to issue 10 infringement notices and recover fines of \$750 on each notice issued, than it is to lay a charge in the District Court for a mid-level offence and not receive a fine that will cover the costs of investigation and prosecution.

While enforcement agencies are increasingly using their new infringement notice powers, how are recipients of notices dealing with the notice when it is received? Most of us on receiving an infringement notice such as a parking ticket will grumble about it. If aggrieved that the ticket is unreasonable, a letter might be written to the enforcement agency objecting to the ticket, and asking that it be cancelled. However, more often than not, the fine will reluctantly be paid after a reminder notice has been sent out requesting payment. Often the level of penalty involved in the infringement notice encourages a "pay up" rather than a question or challenge approach.

This approach, of not questioning infringement notices for OSH and RMA breaches, has real dangers. While we find that clients may be hesitant about taking legal advice over an infringement notice, perhaps on the rationale that it is more cost effective to simply pay up, our experience is that this is a false economy, and infringement notices deserve to be treated with greater care.

WHY SHOULD OSH AND RMA INFRINGEMENT NOTICES BE TREATED SERIOUSLY?

There are a number of reasons why RMA and OSH infringement notices should be treated with great caution:

The fact that previous infringement notices have been issued will be a factor for OSH and the Council in choosing whether to take a prosecution for any later offence. Some local authorities have a "three strikes and you're out" policy, meaning that if there have been two previous infringement offences, the third (and later in time) breach is more likely to result in prosecution,

which involves exposure to the full range of penalties available under the RMA i.e. fines of up to \$200,000, potential imprisonment (only in serious cases) and a risk of court ordered clean up or enforcement orders. For OSH the fines for most offences are up to \$250,000 with the possibility of \$500,000 fines and imprisonment for serious offences. In other words, if you receive an infringement fine, then this is likely to increase the chances of prosecution action being taken for any later offence, and the consequences are far more serious.

If a breach of OSH or RMA legislation occurs later and the enforcement agency (either OSH, or the local council) pursues a prosecution in the District Court, then the fact that there have been previous infringement fines is likely to be treated as an aggravating factor by the Judge when it comes to sentencing.

Apart from the poor record created by an infringement notice, receiving an infringement notice may often indicate that there is an underlying "system" problem which has caused the infringement to come to the attention of the enforcement agency in the first case. One category of OSH fines relates directly to failing to have a hazard identification system.

It follows that there is a real benefit to be obtained by ensuring that a firm's record is kept clean by avoiding infringement breaches. Even though infringement fines are at the lower end of the penalty scale under OSH and RMA, avoiding an infringement notice will reduce the likelihood of being prosecuted for the next breach that occurs, and if a prosecution does result, the absence of an infringement penalty avoids becoming an aggravating factor when it comes to sentencing for any later breach.

IF I GET AN INFRINGEMENT NOTICE, WHAT OPTIONS ARE AVAILABLE?

After receiving an infringement notice there are several available options:

If the infringement is denied, and there is an arguable defence, then the infringement notice can be disputed, and a hearing can be sought. This is requested in writing. It is necessary to set out what the defence to the infringement is, and to expressly request a hearing.

If the infringement is accepted, and not disputed, pay the infringement fine within the prescribed 28 day period;

If you "do nothing" on receipt of an infringement notice, the enforcement agency will issue a reminder notice, and after a further 28 day period, the reminder notice will be filed into the local District Court, a fine will then be imposed, and eventually on non-payment the matter will be handed to the Collections Unit at the Ministry of Justice for collection of the fine, together with any costs that have accrued.

WHAT IF I DISPUTE THE NOTICE, BUT DON'T WANT TO INCUR THE COST OF A DEFENDED HEARING?

If there is dispute about an infringement notice it is important that this is recorded in writing to the enforcement agency.

When the enforcement agency receives a letter concerning a disputed infringement notice, it has the option of deciding whether to accept the explanation put to it, or if it denies that the explanation amounts to a defence, it can elect to pursue the infringement notice. In other words the

enforcement agency has a choice when it receives a letter disputing an infringement notice as to whether it will accept that there is a proper defence or not.

Sometimes we find that even if there is a valid defence, a client may choose to make a pragmatic decision not to contest the infringement notice. This may be on the basis that it is perceived to be more cost effective and to pay the infringement fine than incur the cost of a defended hearing. While decision making of a pragmatic nature is understandable with minor breaches of the law, in the case of infringement notices, the increased risk of facing a prosecution for the next breach means that it is important in this situation to clearly record in writing that while an infringement fee is being paid, that the notice is disputed, and the reasons for the dispute. Even if ultimately there is a choice made to pay the infringement fine, a written record exists of a dispute concerning the notice. In this way, if an unfortunate event or accident later occurs, and there is a breach resulting in a prosecution at some future point in time, then this correspondence can still be referred to explain the previous infringement.

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