

## INQUIRY INTO LOCAL GOVERNMENT REGULATORY PERFORMANCE

### SUBMISSION BY RICHARD ARTHUR FISK

I am employed by South Waikato District Council as its Legal Services Manager. In that role, I am responsible *inter alia* for ensuring that bylaws made by this Council are legally compliant, coherent, and reasonably comprehensible by lay people.

Much of a local authority's regulatory functions are authorised by its bylaws. The Act under which bylaws are made may authorise the local authority to enforce certain provisions in bylaws by the use of infringement offence notices. If not, bylaws must be enforced under the Summary Proceedings Act 1957.

**I submit that the enforcement of local authorities' regulatory functions would be significantly more effective and efficient if the use of infringement offence provisions is more widely available than at present.**

### Background

Some regulatory statutes authorise enforcement of the Act itself, or regulations or bylaws made under it, by infringement notice. Prominent are a large number of road traffic offences, breaches of the Litter Act, certain Resource Management Act offences etc. Some statutes authorise local authorities to issue Infringement Notices for certain offences under these statutes.

Territorial and regional local authorities are set up and operate under the authority of the Local Government Act 2002 ("LGA 2002"). Section 11 LGA 2002 states one of the purposes of local government as being "to promote the social, economic, environmental and cultural well-being of communities, in the present and for the future."

LGA 2002 contains a general authority to make bylaws for a range of different purposes, the effect of which is to contribute to the enhancement of at least one of the four well-beings mentioned in the Act. Many of a local authority's bylaws are made under LGA 2002, specifically section 145, unless they are being made under a statute with specific focus, eg Litter Act, Dog Control Act etc.

Section 259 LGA 2002 provides as follows;

"The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

- (a) Prescribing breaches of bylaws that are infringement offences under this Act:"

There are further provisions relating to setting infringement fees, forms etc.

Regrettably, no such regulations have been made. This is not due to any lack of willingness to do so on the part of Central Government, but because any regulations made under this provision would have to identify specific clauses in each local authority bylaw where a breach is an infringement offence. Otherwise, infringement offences in bylaws could not be enforced as infringement offences, but would require proceeding under the Summary Proceedings Act.

Central Government has examined the feasibility of making regulations under section 259 LGA 2002 that would enable bylaws made under that Act to be enforceable by Infringement Notice. It has concluded that it would be too costly to do so because of practical difficulties in drafting these regulations and the need to amend the regulations every time new infringement offence provisions were included in existing local authority bylaws, or in new bylaws made that included infringement offence provisions.

## **Advantages of Infringement Offence Provisions**

I believe that regulatory functions will be more effectively enforced, and at reduced cost, if local authorities can serve an infringement notice, than if forced to use any other procedure. My reasons for this belief are;

1. The immediacy of the enforcement action taken relative to the time of the offence or breach. In the case of minor infringements, receiving an "on-the-spot" notice is often more effective in the mind of the offender than Court documents delivered days or weeks afterwards.
2. Local authorities may be reluctant to take action for the breach of a bylaw where they cannot serve an infringement notice. This could be because any alternative is either;
  - On a cost/benefit analysis, too costly to justify taking action; or
  - Because staff lack the skill to take action, so it would have to be contracted out, and the cost of so doing cannot be justified; or
  - perceived to be too cumbersome and/or time-consuming to justify taking action for a minor matter.

*(Comment; If local authorities feel that they lack the practicable and effective tools necessary to enforce by laws, it is likely they will do nothing more than send warning or desist letters, or approach the offender to advise them of their offence. Local authorities caught in this position will frequently have put resources towards bylaw enforcement, which ratepayers will have paid for, and will continue to pay, but without any tangible return to them in the shape of fees or fines collected from offenders. In that case, it is the ratepayers who pay for the resources of enforcement of bylaws, not the abusers.)*

3. Minor offences and breaches of bylaws that pass through the Courts system, because they cannot be enforced by service of an infringement notice, clog the Courts and cause additional costs, only some of which may be recovered.

## **Conclusion**

In the interests of a greater level of effectiveness and efficiency in the enforcement of their regulatory powers by local authorities, they need to have greater access to provisions that allow them to serve infringement notices for bylaw breaches. The end result, for the reasons given above, should be to reduce the costs borne by ratepayers.

(Richard Arthur Fisk)