

High Court Confirms RMA Convictions Despite Statutory "Gap"

The High Court has found that convictions can be entered for offences under the Resource Management Act 1991, despite a "legislative hiatus" in section 21 of the Summary Proceedings Act 1957 ("SPA").

As discussed in previous editions of LGLaw, it has recently been argued in both the District Court and the High Court that section 78A of the SPA precludes the entering of a conviction for offences under section 9 (land use) and 15 (discharge of contaminants) of the RMA because breaches of these sections are defined by the RMA and its regulations as Infringement Offences to which the procedure under section 21 of the SPA would apply (see our earlier article RMA Convictions Upheld *).

In November, the Environment Court rejected this argument. The High Court in **Wallace Corporation Limited & Ors v Waikato Regional Council** ** has now done likewise, though on different reasoning.

Unlike the District Court, Justice Wild accepted that there was a "legislative hiatus" in section 21 of the SPA. However, he considered that the gap was unintended by Parliament and it was for the Court to "make it work", as follows:

"Parliament needed to make it clear that it was not changing the law so that all offences which, following the amendment, came within the s21 SP Act definition of "infringement offences" *had* to be dealt with as infringement offences. It needed to make it clear that these offences could be dealt with either as infringement offences or as summary offences. Parliament failed to make those matters clear.

Accordingly there is a gap in the RMA, and Acts similarly amended by insertion of "infringement offences" provisions such as ss 343A-343D RMA. In such a situation, I must try to make the RMA work as I am sure Parliament intended it to work."

His Honour therefore applied a purposive interpretation and found that section 21 of the SPA, and the process it contains, only applies where an infringement notice has been issued, thereby supporting



the current enforcement practice of requiring an election between prosecution and the infringement process. His Honour concluded that, if clarification of the position is necessary, legislative amendment of section 21 of the SPA would be appropriate.

* www.brookfields.co.nz/newsroom/localgovernment/lgnov09_4.asp.

** HC, Hamilton, CRI 2008-404-000404, 21 December 2009, Wild J.

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