

Enforcement Policy

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PURPOSE

The purpose of this policy is to ensure that Masterton District Council (MDC) applies a consistent, appropriate and coordinated approach when making decisions about compliance and enforcement.

SCOPE

This policy applies to all legislation, regulations and bylaws where MDC has a responsibility for enforcement. Refer to Appendix 1 for a list of the main legislation where MDC has enforcement obligations.

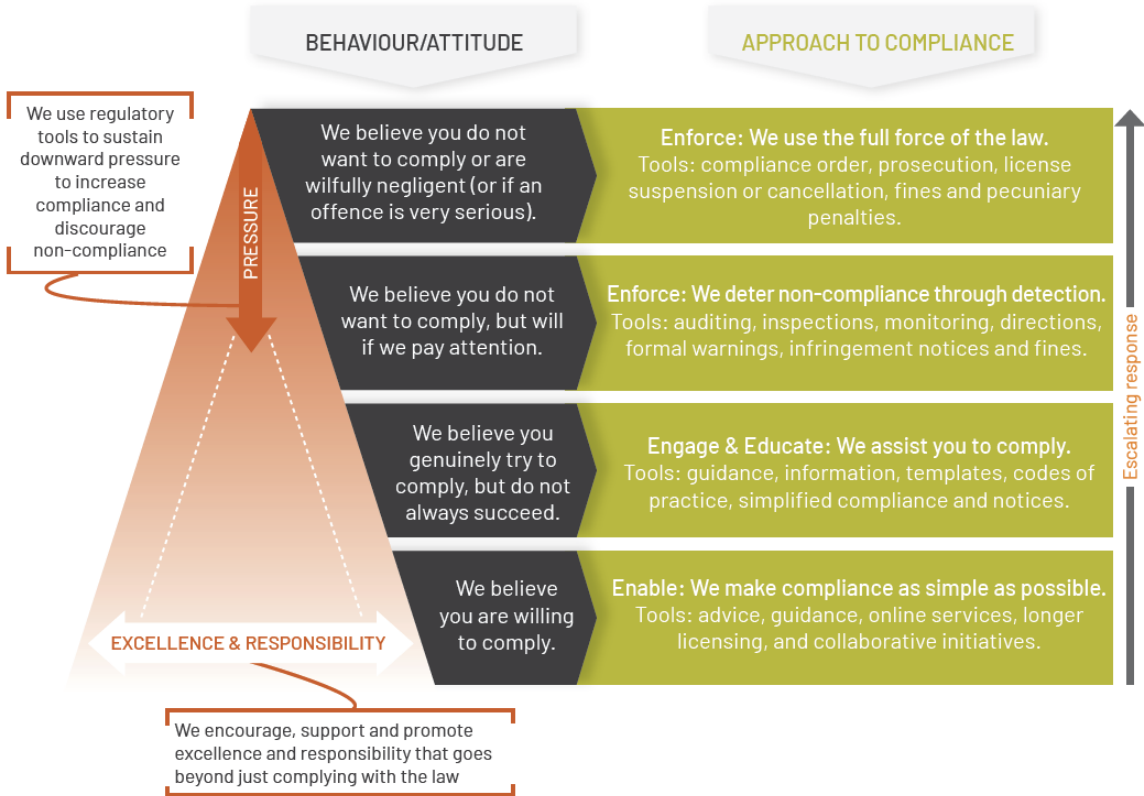
This policy is supplemented, where necessary, by more detailed documents, which set out the specific procedures and standards for carrying out compliance monitoring, incident response and enforcement activities.

STRATEGIC COMPLIANCE APPROACH

MDC takes a broad-spectrum approach to encourage the highest levels of compliance, targeting interventions according to the individual’s or group’s willingness to comply, and the seriousness of the offence.

This approach is illustrated in the compliance pyramid¹ below. At the bottom of the pyramid are those who are willing to comply, and at the top are those who resist compliance. The pyramid is designed to create downward pressure i.e. to move those who are non-compliant down the pyramid to full compliance, where lower level and less costly interventions can be utilised.

Applying the available enforcement options outlined in the model provides clear direction to our community on the expectations and likely response from MDC to those failing to comply.



Compliance Monitoring

Where monitoring requirements are not stated in consent conditions, legislation, regulations, or other national standards, the Compliance Monitoring Guideline (refer Appendix 2) should be used to assist in determining appropriate monitoring frequencies.

¹ Adapted from Queenstown Lakes District Council’s Enforcement Strategy and Prosecution Policy.

PRINCIPLES OF COMPLIANCE AND ENFORCEMENT

MDC will adhere to the following principles² when carrying out enforcement activities.

Transparency

We will provide clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure that the community has access to information about industry environmental performance, as well as actions taken by us to address environmental issues and non-compliance.

Consistency of Process

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

Fair, Reasonable and Proportionate Approach

We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably, and ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment and the seriousness of the non-compliance.

Evidence-based

We will use an evidence-based and informed approach to our decision-making. Our decisions will be informed by a range of sources, including sound science and information received from other regulators, members of the community, industry and interest groups.

Collaborative

We will work with and, where possible, share information with, other regulators and stakeholders to ensure the best compliance outcome for our regions. We will consider public interest and engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community and environmental outcomes.

Lawful, Ethical and Accountable

We will conduct ourselves lawfully, impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

Outcome-focused

We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

Responsive and Effective

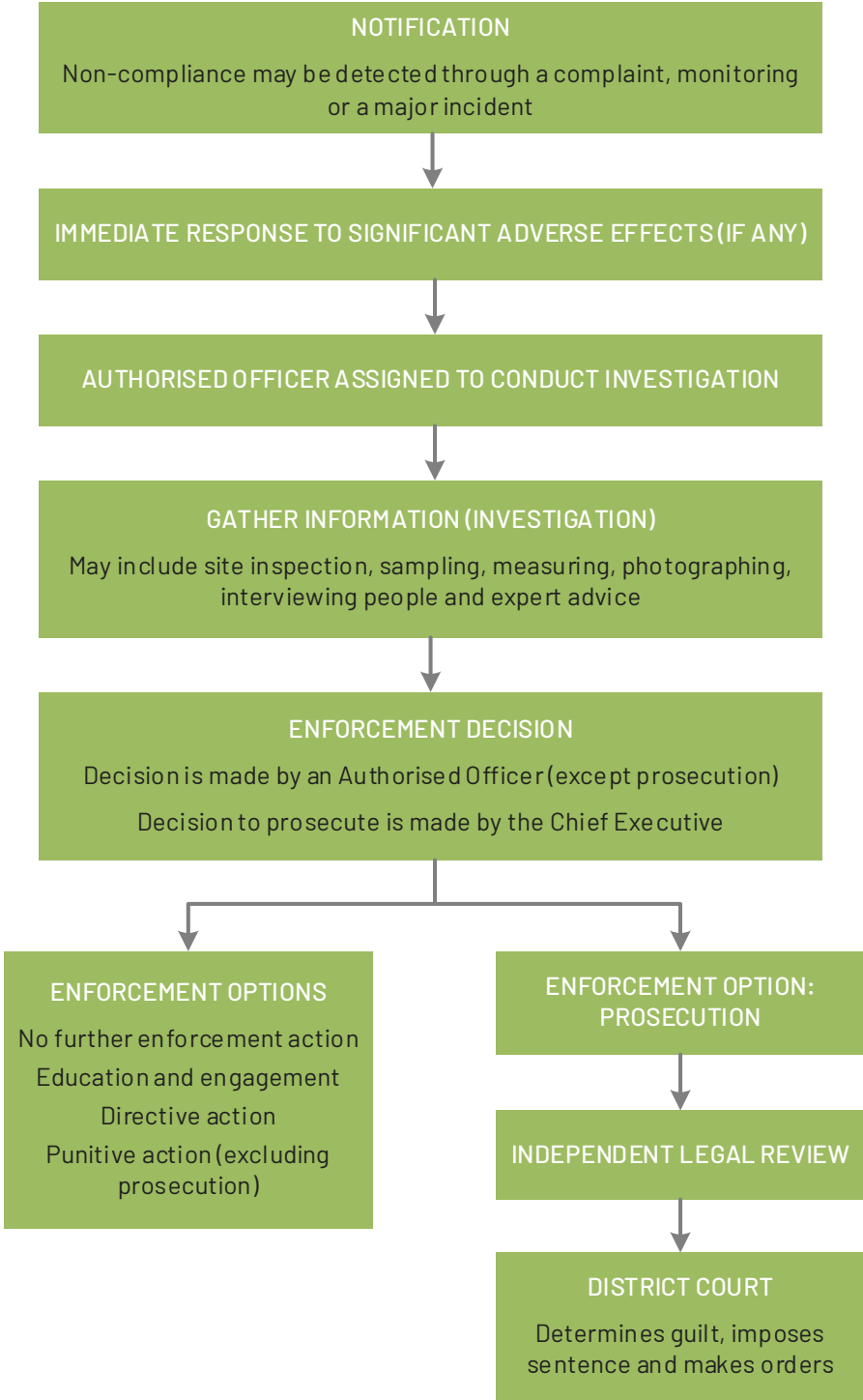
We will consider all alleged non-compliance to determine the necessary interventions (using a risk-based approach) and actions to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

² Ministry for the Environment. (2018). *Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991*.

ENFORCEMENT PATHWAY

MDC’s response to non-compliance will be largely dependent on several factors, including the need to deal with any ongoing adverse environmental effects, risk of continuing offending and the seriousness of the offence.

The diagram below provides an overview of MDC’s typical process in response to matters of non-compliance, from discovery of an offence through to the decision to take enforcement action.



Stage 1: Immediate Response to Significant Adverse Effects

Upon discovery, the initial response will be to assess the actual or potential effects, if any, resulting from the offence. Significant adverse effects will require an immediate response prior to any other action. For example, this may include:

- a full pollution prevention response in order to prevent further serious environmental damage from starting or continuing;
- an immediate closure in the case of a serious food safety or suitability risk³; or
- seizure of an offending animal in the case of a dog attack.

Stage 2: Gather Information

An investigation will be conducted to confirm the circumstances, identify how and why the breach occurred, and enable informed decisions to be made.

The depth and scope of the investigation will be dependent on the seriousness of the incident. Investigation activities may include:

- undertaking a site visit to collect information and/or potential evidence such as samples, photographs, measurements or ecological assessments;
- interviewing people about what they know about the incident; and
- seeking advice from independent experts.

For less serious matters, it may be sufficient to write to the offending party, requiring written explanation why the offence occurred and the circumstances behind it.

In more serious matters, the investigation will be more in depth and detailed witness statements will be obtained. In this circumstance, liable parties will be interviewed under formal caution.

Note: *Notwithstanding the above, MDC may proceed directly to enforcement action, including prosecution, where the circumstances support this.*

Stage 3: Enforcement Decision

Deciding on the appropriate enforcement response is often complicated by a range of factors. In order to make a sound and justifiable decision, it is essential that all relevant issues surrounding the matter are carefully considered, prior to any enforcement action being taken. Factors to consider are:

- What actual or potential adverse effects have or could occur from the breach/what is the actual or potential extent of harm?
- What is the value or sensitivity of the environment affected by the breach?
- Was the environment affected by the breach of significance to iwi?
- What is the level of public interest in the breach?
- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the liable party, and how foreseeable was the incident?
- What efforts were made by the liable party to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the liable party?
- Was the incident a repeat non-compliance by the liable party or has previous enforcement action been taken against the party for the same or similar breach?
- Has the liable party failed to act on prior instructions, advice or notice?
- Is there a degree of specific deterrence required in relation to the alleged offender?
- Is there a need for a wider general deterrence required in respect of this activity or industry?
- Is the decision to prosecute (or not prosecute) in line with the Solicitor General's guidelines?

Not every factor will be relevant every time. Each case is unique and the individual circumstances need to be considered on each occasion to achieve a fair and reasonable outcome.

³ For serious food safety risks, the Ministry of Primary Industries will always be advised.

ENFORCEMENT OPTIONS

MDC has a broad range of enforcement options available to address matters of non-compliance. The tools that apply to the different regulatory functions are illustrated in the table below. The tools can be categorised into three main types:

- Informal actions: focused on providing education and incentive-based responses to allow the person or organisation to become better informed and develop their own means to improved compliance;
- Directive actions: focused on looking forward, giving direction and righting the wrong; and
- Punitive actions: focused on looking back and holding people accountable for what they have done.

	Building	Planning & Resource Consents	Environmental Health	Food	Alcohol	Noise	Animal Control	Bylaws
Informal Actions								
Education & Engagement	✓	✓	✓	✓	✓	✓	✓	✓
Directive Actions								
Letter of Direction/ Warning	✓	✓	✓	✓	✓	✓	✓	✓
Excessive Noise Direction						✓		
Notice to Fix	✓							
Improvement Notice				✓				
Food Safety Direction				✓				
Abatement Notice		✓	✓			✓	✓	
Enforcement Order		✓						
Compliance Order				✓				
Negotiated Settlements	✓	✓	✓		✓	✓	✓	✓
Punitive Action								
Formal Warning	✓	✓	✓		✓	✓	✓	✓
Infringement Notice	✓	✓	✓	✓	✓	✓	✓	✓
Suspension or Cancellation of Registration				✓				
Prosecution	✓	✓	✓	✓	✓	✓	✓	✓

Selecting the appropriate enforcement response will depend on such factors as the seriousness of the offence, the significance of adverse effect on people and/or the environment, the liable party's previous offences and the level of remorse shown by the offender.

A brief description of each of the relevant tools, impacts on the liable party, and the circumstances when MDC might use these tools, are provided in Appendix 3.

WHO CAN MAKE THE DECISION?

The Authorised Officer assigned to investigate the matter will decide on the appropriate enforcement action, in consultation with other Authorised Officers.

A decision to prosecute must be approved by the Chief Executive.

A decision to prosecute under the Food Act 2014 will be made in consultation with the Ministry of Primary Industries.

IWI INVOLVEMENT IN ENFORCEMENT DECISIONS

The impact on iwi will be considered when determining the appropriate enforcement action.

Where a prosecution is undertaken, MDC will approach affected iwi for an impact statement, which will form part of the fact for court proceedings.

INDEPENDENT LEGAL REVIEW

An independent legal review is required before a prosecution is initiated. This review will consider the matter in its entirety. The review applies an evidential test and public interest test.

Evidential Test

The first part of the test is the evidential test for prosecution and requires a legal assessment of whether:

- the evidence relates to an identifiable person (whether natural or legal);
- the evidence is credible;
- MDC can produce the evidence before the court and it is likely it will be admitted by the court;
- the evidence can reasonably be expected to satisfy an impartial jury (or Judge), beyond a reasonable doubt, that:
 - the individual has committed a criminal offence;
 - the individual has given any explanations; and
 - if so, whether the court is likely to find the explanations credible in the light of the evidence as a whole; and
- there is any other evidence MDC should seek out which may support or detract from the case.

Once it has been established that there is sufficient evidence to provide a reasonable prospect of conviction, the test for prosecution requires a consideration of whether the public interest requires a criminal prosecution.

Public Interest Test

The second part of the test for prosecution is the public interest test, which is important for ensuring that the discretion to prosecute is exercised in accordance with the rule of law and any relevant statutory requirements (refer to Appendix 2).

EVALUATING EFFECTIVENESS

All enforcement action undertaken by MDC will be evaluated for effectiveness in achieving the desired outcome. In both successful and unsuccessful actions where further enforcement action was required, it is useful to examine what was effective or not, what could have been improved or changed to make the process more effective.

RECORDKEEPING AND REPORTING

MDC will keep records of all compliance and enforcement activity, in accordance with the requirements of the relevant Act.

REVIEW OF POLICY

This policy will be reviewed initially after one year, to assess its effectiveness. Subsequent reviews will be every five years.

DEFINITIONS

Authorised Officer: Any officer or agent appointed by MDC as an enforcement officer under the LGA or the Land Transport Act 1998, or an Environmental Health Officer under the Health Act 1956.

Compliance: Adherence to the legislation, regulations and bylaws under which MDC has responsibilities to enforce.

Enforcement: Action undertaken by MDC in response to an offence.

Offence: An action of non-compliance.

RELATED DOCUMENTS

Chief Executive and Staff Delegations Manual

REFERENCES

Ministry for the Environment. (2018). *Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991*.

Compliance and Enforcement Special Interest Group (2016). *Regional Sector Strategic Compliance Framework 2016-2018*.

Crown Law. (2013). *Solicitor-General's Prosecution Guidelines*.

VERSION CONTROL

Version	Date	Summary of Amendments	Approved By
1	25/7/19	New policy.	Strategic Leadership Team

APPENDIX 1: LEGISLATION WITH ENFORCEMENT REQUIREMENTS

The main legislation where MDC has responsibility for enforcing regulatory requirements are listed below.
Note: that this is not a complete list.

- Building Act 2004
- Burial and Cremation Act 1964
- Criminal Procedure Act 2011
- Dog Control Act 1996
- Food Act 2014
- Freedom Camping Act 2011
- Gambling Act 2003
- Health Act 1956
- Impounding Act 1955
- Land Transport Act 1998
- Litter Act 1979
- Local Government Act 2002
- Local Government Act 1974
- Machinery Act 1950
- Public Works Act 1981
- Reserves Act 1977
- Resource Management Act 1991
- Sale and Supply of Alcohol Act 2012
- Summary Proceedings Act 1957
- Trespass Act 1980

APPENDIX 2: COMPLIANCE MONITORING GUIDELINE

MDC uses a risk-based approach to compliance monitoring to target activities where that have a higher risk of non-compliance, or where non-compliance will have a more severe risk of harm to people and/or the environment. This approach enables MDC to:

- prioritise limited resources according to the level of risk associated with an activity;
- target activities and areas where non-compliance is most likely; and
- have robust and transparent decision-making.

Risk Matrix

The risk matrix below can be used to assess the level of risk associated with regulated activities.

Activities that are likely to be compliant, and where the impact of non-compliance is expected to be insignificant or minor, have a low level of risk. Conversely, activities have a high level of risk where non-compliance is more likely, and the impacts of non-compliance may be severe.

		Consequence of non-compliance				
		Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Severe (5)
Likelihood of non-compliance	Almost Certain (5)	Minor (5)	Moderate (10)	Moderate (15)	High (20)	High (25)
	Likely (4)	Minor (4)	Minor (8)	Moderate (12)	Moderate (16)	High (20)
	Moderate (3)	Low (3)	Minor (6)	Minor (9)	Moderate (12)	Moderate (15)
	Unlikely (2)	Low (2)	Minor (4)	Minor (6)	Minor (8)	Moderate (10)
	Rare (1)	Low (1)	Low (2)	Low (3)	Minor (4)	Minor (5)

The following factors will be considered when determining the likelihood of non-compliance:

- The scale and complexity of the activity.
- The historical compliance history of similar activities.
- The compliance history of the business or person being regulated.

The following factors will be considered when determining the likely consequence of non-compliance:

- The environmental aspect involved (air, land, water, coastal marine area).
- The impact on the environment from the operation when it operates within the conditions of the consent.
- The impact on the environment when the operation does not operate within the conditions.
- The sensitivity of the local environment, such as the proximity to residential premises or waterways, or areas of cultural significance.

Other factors that may be relevant include:

- Regional Plan priorities
- Environmental monitoring programme priorities.
- National regulations.
- Council and community priorities.
- Stakeholder priorities to determine.

Determining Monitoring Frequency

The frequency of compliance monitoring may be guided by national requirements (e.g. water regulations) and resource consent conditions (e.g. some resource consents will specify a monitoring frequency and/or require the submission and review of various monitoring reports on an annual, or more frequent, basis).

Where no guidance is available, the risk score can be used to set the compliance monitoring frequency, as illustrated in the table below.

Risk Score	Monitoring Frequency
17-25	High – Quarterly Inspection
10-16	Moderate – Six-Monthly Inspection
4-9	Minor – Annual Inspection
1-3	Low Risk – No Default Inspections

APPENDIX 3: ENFORCEMENT TOOLS

Informal Actions			
Action	Description of action	Potential impact/s on the liable party	When might this action be appropriate
Education & Engagement	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, MDC can provide information or guidance around rules and regulations or provide assistance to enable parties to achieve compliance.	This is a non-formal process and as such has no legal implications.	When dealing with cooperative parties, who are motivated to do the right thing but lack the knowledge or skills necessary to achieve and maintain compliance.
Directive Actions			
Action	Description of action	Potential impact/s on the liable party	When might this action be appropriate
Letter of Direction/ Warning	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, MDC can give a written direction for a party to take or cease a particular action.	Direction is not legally enforceable.	When dealing with cooperative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning.
Excessive Noise Direction	A binding notice that requires excessive noise to be reduced to a reasonable level. Directions can apply for a period of up to 72 hours and can be given verbally or in writing.	If a direction is not complied with, officers can seize and remove, render inoperable or make unusable, any device causing excessive noise.	Used in urgent cases where noise is causing immediate nuisance. Usually in response to complaint from a member of the public e.g. a burglar alarm is sounding continuously, or a noisy party continues to an unreasonable hour.
Notice to Fix	A formal, written directive drafted and served by MDC, instructing a specified person to correct an instance of non-compliance with the Building Code and/or Building Act. The form and content of the notice are specified in the Building Act.	Direction is legally enforceable. Breaching a Notice to Fix is an offence and exposes liable parties to punitive action.	Where a building warrant of fitness and/or compliance schedule requirements in the Building Act have not been adhered to or when a Building Consent is not obtained for building work that requires a consent.
Improvement Notice	A formal, written directive drafted and served by MDC to any person that is failing or has failed to comply with the Food Act 2014, or its associated legislation and instruments.	Interruption of food business trading. If the notice is not actioned, can escalate to a Compliance Order.	Can be issued for problems with cleaning and sanitation, maintenance (including repair and replacement), pest management or food handling/processing.
Directive Actions			

Action	Description of action	Potential impact/s on the liable party	When might this action be appropriate
Food Safety Officer Direction	A formal, written directive drafted and served by MDC to any person that is failing or has failed to meet requirements to ensure the safety and suitability of food.	Interruption, restriction or closure of food business trading. Food Safety Officers can seize, condemn or require disposal of food or a food-related accessory.	Where required to ensure the safety and suitability of food.
Abatement Notice	A formal, written directive drafted and served by MDC, instructing an individual or organisation to cease an activity or requiring them to do something.	Direction is legally enforceable. Breaching an Abatement Notice is an offence and exposes liable parties to punitive action.	Where there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.
Enforcement Order	Offers more options than an Abatement Notice, including the ability to recover clean-up costs incurred, or likely to be incurred, in avoiding, remedying or mitigating any adverse effect on the environment.	Breaching an Enforcement Order is an offence and exposes liable parties to punitive action.	When an Abatement Notice has not been complied with, as another way of achieving compliance.
Compliance Order	MDC can apply to a District Court for a Compliance Order. The Court may issue a Compliance Order for anything that, in the Court's opinion, breaches or is likely to breach the Food Act 2014.	Order is legally enforceable. Breaching a Compliance Order is an offence and exposes liable parties to punitive action.	Where it is necessary to prevent or mitigate serious danger to public health or where an Improvement Notice has not provided sufficient incentive to a business to address an issue of legislative non-compliance.
Negotiated Settlements	An individual or organisation may approach MDC with a proposal for settlement. MDC is open to resolving non-compliance by agreement, where a remedy is possible and where this is prompt, easily implemented and in the public interest.	Typically requires the applicant to admit that they have breached the law, cease the non-compliant conduct, pay compensation, pay MDC's costs and may involve some publicity	Will only be agreed to if it is in the public interest. MDC is unlikely to agree to a negotiated settlement where the non-compliance has caused serious harm, the applicant is a repeat offender or actively resists compliance.

Punitive Actions

Action	Description of action	Potential impact/s on the liable party	When might this action be appropriate
Formal Warning	A letter to a culpable party informing them that an offence against an Act or regulation has been committed, and that they are liable.	No further action will be taken in respect of that breach. The warning will form part of a history of non-compliance and will be considered if there are future offences.	When: <ul style="list-style-type: none"> • an administrative, minor or technical breach has occurred; and • the environmental effect, or potential effect, is minor or trivial in nature; and • the subject does not have a history of non-compliance; and • the matter is one which can be quickly and simply put right; or • a written warning would be appropriate in the circumstance.
Infringement Notice	A written notice which requires the payment of a fine. The amount of the fine is set in the relevant legislation.	No further action will be taken in respect of that breach. The infringement forms part of a history of non-compliance and will be considered if there are future offences.	When: <ul style="list-style-type: none"> • there is prima facie (on the face of it) evidence of a legislative breach; and • a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and • where an infringement notice is considered to be a sufficient deterrent.
Suspension or Cancellation of Registration	A temporary or permanent removal of registration.	The business will no longer be able to trade in food.	Where the food business food control plan or national programme is no longer effective or meets the requirements of the Food Act. Where there is an ongoing, critical non-compliance by a food business.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. Matters are heard in either the District Court or Environment Court, depending on the Act. All criminal evidence rules and standards must be met.	A successful prosecution will generally result in a conviction and a penalty imposed. A prosecution forms part of a history of non-compliance and will be considered if there are future offences.	Where the matter is sufficiently serious to warrant the intervention of the criminal law. Consideration will be given to the Solicitor-General's Prosecution Guidelines 2013 (refer Appendix 3).

APPENDIX 4: SOLICITOR-GENERAL'S PROSECUTION GUIDELINES

Listed below are some of the key public interest considerations for and against a decision to prosecute⁴.

Public Interest Considerations in Support of Prosecution

- The predominant consideration is the seriousness of the offence. The gravity of the maximum sentence and the anticipated penalty is likely to be a strong factor in determining the seriousness of the offence.
- Where the offence involved serious or significant violence;
- Where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct;
- Where the defendant has relevant previous convictions, diversions or cautions;
- Where the defendant is alleged to have committed an offence whilst on bail or subject to a sentence, or otherwise subject to a Court order;
- Where the offence is prevalent;
- Where the defendant was a ringleader or an organiser of the offence;
- Where the offence was premeditated;
- Where the offence was carried out by a group;
- Where the offence was an incident of organised crime;
- Where the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim, the greater the aggravation;
- Where the offender has created a serious risk of harm;
- Where the offence has resulted in serious financial loss to an individual, corporation, trust person or society;
- Where the defendant was in a position of authority or trust and the offence is an abuse of that position;
- Where the offence was committed against a person serving the public, for example a doctor, nurse, member of the ambulance service, member of the fire service or a member of the police;
- Where the defendant took advantage of a marked difference between the actual or developmental ages of the defendant and the victim;
- Where the offence was motivated by hostility against a person because of their race, ethnicity, gender, sexual orientation, disability, religion, political beliefs, age, the office they hold, or similar factors;
- Where there is any element of corruption.

Public Interest Considerations against Prosecution

- Where the Court is likely to impose a very small or nominal penalty;
- Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;
- Where the offence is not on any test of a serious nature, and is unlikely to be repeated;
- Where there has been a long passage of time between an offence taking place and the likely date of trial such as to give rise to undue delay or an abuse of process unless:
 - the offence is serious; or
 - delay has been caused in part by the defendant; or
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation.
- Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness;

⁴ Crown Law (2013). *Solicitor-General's Prosecution Guidelines*.

- Where the defendant is elderly;
- Where the defendant is a youth;
- Where the defendant has no previous convictions;
- Where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;
- Where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants should not be able to avoid prosecution simply because they pay compensation);
- Where the recovery of the proceeds of crime can more effectively be pursued by civil action;
- Where information may be made public that could disproportionately harm sources of information, international relations or national security;
- Where any proper alternatives to prosecution are available (including disciplinary or other proceedings).