

RESPONDING TO BREACHES OF THE LAW

INTRODUCTION

This fact sheet was produced by the Environmental Law Association to help members of the public respond effectively to breaches of environmental law.

BREACHES OF ENVIRONMENTAL LAW

The public has a key role in identifying and responding to breaches of environmental law.

Breaches of environmental law fall into two broad categories:

- environmental offences, committed by individuals, companies or government agencies; and
- government decisions that do not comply with environmental laws.

ENVIRONMENTAL OFFENCES

Examples of environmental offences include:

- development without environmental impact assessment (EIA) and approval;
- breaching EIA approval conditions;
- polluting air or water without a permit;
- breaching pollution permit conditions;
- logging without a timber licence;
- breaching timber licence conditions;
- breaching the logging code of practice;
- commercial fishing without a licence; or
- taking undersized or protected fish.

For more information about these offences, refer to the other fact sheets in this series:

- **Fact Sheet 1: Environmental Assessment**
- **Fact Sheet 2: Pollution Law**
- **Fact Sheet 3: Forestry Law**
- **Fact Sheet 4: Fisheries Law.**

ENFORCEMENT OF ENVIRONMENTAL LAWS

Government officers and police are responsible for enforcing environmental laws.

The Department of Environment has broad powers to enforce environmental legislation, including powers to inspect premises, issue binding notices and suspend or cancel EIA approvals and pollution licences.¹

The Forest Department is responsible for enforcing forestry laws, including the logging code of practice, and has the power to suspend or cancel timber licences.²

The Fisheries Department is responsible for enforcing fisheries laws, with the assistance of honorary fish wardens. For more information about the powers of fish wardens, refer to **Fact Sheet 4: Fisheries Law**.

Police may arrest and charge any person reasonably suspected of committing an environmental offence. Offenders may be prosecuted by the police, the Director of Public Prosecutions or, in some cases, the relevant government agency.

Courts may impose fines and prison sentences, and may make other orders, including cancellation of certain licences. If a person is convicted of an offence under the *Environment Management Act*, the court may make a range of orders, including remediation and compensation orders.³

RESPONDING TO ENVIRONMENTAL OFFENCES

Members of the public (including resource owners) can improve the enforcement of environmental laws by monitoring and reporting breaches, and advocating for stricter enforcement by government.

If you believe that an environmental offence is being, or has been, committed:

1. Discuss the breach with the suspected offender, taking care that you do not place yourself in personal danger.

Note: Detaining or assaulting a person or taking their property without legal authority is a criminal offence.⁴ Do not place yourself at risk of criminal charges by taking the law into your own hands.

2. Report the incident to the police and the relevant government agency, providing as much detail as possible, including:

- description of the incident;
- time, date and location of the incident;
- registration number of the offender's vessel or vehicle;
- name and contact details of the alleged offender, if known;
- names and contact details of any witnesses, if known;
- state of the environment before the incident;
- photographs, video and/or physical evidence.

Record the details of your report, including the name and contact details of the officer who received the report.

3. Follow up with the police or government agency to determine what enforcement action, if any, has been taken (e.g. verbal warning, stop work order, on-the-spot fine, cancellation of licence, prosecution).

4. If you are dissatisfied with the response of the police or government agency:

- ask to speak to the supervisor of the officer who received your report;
- discuss the incident with influential people in your local community;
- report the incident to environment groups and the media; and
- consider seeking legal advice.

If the police or government agency does not provide an adequate response, you may be able to take legal action to enforce the law.

For example, you may be able to apply for a court order to restrain unlawful development under the *Environment Management Act*.

The *Criminal Procedure Code* allows any person to initiate a private prosecution in a magistrate's court for any criminal offence, including environmental offences.⁵

You may be able to seek compensation for harm to you or your property caused by an environmental breach. For example, the *Environment Management Act* allows any person to seek damages for loss suffered as a result of a pollution incident.⁶

If you are considering legal action, seek legal advice as soon as possible, as delay may affect your legal rights. For more information about seeking legal advice, see below.

UNLAWFUL GOVERNMENT DECISIONS

The law set out rules and procedures for government decision-making. If a government decision-maker does not follow these rules and procedures, you may be able to challenge their decision in court.

Examples of potentially unlawful government decisions include:

- approving a development without an environmental impact assessment (EIA);
- failing to provide opportunities for public participation during the EIA process;
- failing to consider relevant environmental impacts when issuing an EIA approval;
- issuing a pollution permit without first inspecting the facility;
- issuing a pollution permit that does not include the relevant standard conditions;
- issuing a timber licence without EIA approval from the Department of Environment;
- issuing a timber licence on native land without consent from the Native Land Trust Board; or
- issuing a fishing licence without a letter of consent from the relevant chief.

For information about these decisions, refer to the other fact sheets in this series.

CHALLENGING GOVERNMENT DECISIONS

If you believe that a government decision was unlawful, you may be able to apply to the court for 'judicial review' of the decision.

To commence judicial review proceedings, a person must demonstrate that they have a 'sufficient interest' in the matter. This has traditionally been limited to proprietary or economic interests, but Fijian courts have adopted a more flexible approach in recent years, with a view to allowing 'publicly minded citizens and groups to challenge unlawful and suspect public administration'.⁷

In judicial review proceedings, the court examines the **legality** of the decision, not the merits of the decision. This means the court can only consider whether the decision was legal, not whether it was a good decision.

For example, the court may find that the decision was unlawful if the decision-maker:

- failed to follow proper legal procedure;
- failed to take into account relevant considerations;
- took into account irrelevant considerations; or
- acted beyond their legal powers.

If you are considering challenging a government decision, it is important to seek legal advice as soon as possible, as delay may prevent you from taking legal action.

SEEKING LEGAL ADVICE

If you are seeking legal advice, it is useful to provide as much information as possible about your case. For example:

- all relevant correspondence;
- all relevant approvals, permits or licences;
- all relevant reports, including EIA reports;
- evidence of environmental harm.

TAKING LEGAL ACTION

Litigation is a powerful tool for protecting the environment. However, it is important to note that litigation can be a time consuming, expensive and exhausting process.

The financial costs of legal action may include:

- court fees
- fees for legal representation
- fees for technical reports
- fees for expert witnesses
- incidental expenses, such as photocopying.

If you lose, you may be required to pay the other side's legal costs. If you are considering taking legal action, seek legal advice on your prospects of success and potential costs.

ELA LEGAL ASSISTANCE SERVICE

ELA provides legal assistance in cases that meet the association's casework guidelines. For free initial advice, call the ELA telephone advice line during business hours: 331 9084.

Examples of the type of assistance that ELA may provide include:

- providing legal advice on local environmental issues;
- providing legal advice on national law reform issues;
- providing advice on scientific or technical matters;
- referral to an ELA member for legal or scientific advice;
- referral to another appropriate organisation or agency;
- writing letters to government agencies on behalf of clients;
- representing clients in public interest environmental litigation.

For more information about the ELA legal assistance service, including our casework guidelines, please visit: www.ela.org.fj.

USEFUL CONTACTS

Environmental Law Association
15 Ma'afu Street, Suva
330 0122

Department of Environment
19 MacGregor Road, Suva
Tel: 331 1699

Forest Department
Takayawa Building, Toorak, Suva
Tel: 330 1611

Department of Fisheries
Takayawa Building, Toorak, Suva
Tel: 336 1122

ENDNOTES

¹ *Environment Management Act 2005*, ss.19-21.

² *Forest Decree 1992*, s.19.

³ *Environment Management Act 2005*, s.47.

⁴ *Penal Code*, ss.244, 262, 278.

⁵ *Criminal Procedure Code*, s.78(2).

⁶ *Environment Management Act 2005*, s.50.

⁷ *Yabaki v President of the Republic of Fiji Islands* [2003] FJCA 3, Majority Judgment

DISCLAIMER: This fact sheet provides general information about the law, and is no substitute for legal advice relating to your particular situation. ELA accepts no responsibility for any loss resulting from reliance on the information provided in this fact sheets.

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