

In the matter of

the Resource Management Act 1991

and in the matter

An inquiry pursuant to Schedule 1 RMA into the provisions of the proposed One Plan notified by Horizons Regional Council.

**THE MEANING OF 'INDIVIDUAL'
IN SECTION 14 RMA**

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Introduction

1. The Hearing Panel asked for assistance on the meaning of the word 'individual' in s.14(3). Questions include: does 'individual' mean something different from 'person' and does an individual's animals include a dairy herd?
2. Section 14(3) provides:

"14 Restrictions relating to water

...

(3) A **person** is not prohibited by subsection (1) from taking, using, damming, or diverting any water, heat, or energy if-

(a) ...

(b) In the case of fresh water, the water, heat, or other energy is required to be taken or used for-

i. An **individual's** reasonable domestic needs; or

ii. The reasonable needs of an **individual's animals** for drinking water,-

And the taking or use does not, or is not likely to, have an adverse effect on the environment."

Meaning of an individual's animals

3. Section 14 uses both the term 'individual' and 'person'. Neither the RMA nor the Interpretation Act (IA) include a definition of individual. 'Person' is defined in the RMA as:

"**Person** includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate"

4. Person is similarly defined in the Interpretation Act 1999 with the material difference that the IA is silent on whether the Crown is a person:

"**Person** includes a corporation sole, a body corporate, and an unincorporated body"

5. The term 'individual' is used in s.122 RMA in the context of consents being personal property and in the case of an individual in bankruptcy the consent is administered by the Official Assignee.

6. In the *Customs Appeal Authority Decision 1/98* 8/1/98, CAA8/96, the scope of the term 'individual' arose in the context of Section 131 of the Customs and Excise Act 1996, which says:

"131 Access to Customs computerised entry processing systems

No **person** shall transmit to, or receive from, a Customs computerised entry system unless that **person** is an **individual** who is registered by the Chief Executive as a user of that Customs computerised entry processing system."

The Court had to decide whether a company could be registered as an individual under the Act. Barber DCJ said:

"It seems to me to be difficult to go behind s 131 of the Act which specifies that no person shall be involved with the computerised entry processing system unless that person is an individual. In terms of the ordinary use of the English language that could only apply to human beings as distinct from corporations. As [counsel] submitted, by using the terms 'person' and 'individual' within the same section in this manner, it is clear that the legislature intended each of those words to have a different meaning and so refer to a different class. If it were otherwise, then the words 'an individual who is registered', which are contained within the phrase 'unless that person is an individual who is registered by the Chief Executive' in s 131 of the Act, would be redundant. The Act does not provide a definition of the term 'person' nor of the term 'individual'. There is however a definition of the term 'person' in s 4 of the Acts Interpretation Act 1924 ... Even if that is the meaning to be attributed to the term 'person' as used in s 131 of the Act, ie corporates and persons, the way in which s 131 is worded means that the word 'individual' must mean something different from the word 'person'."

7. The 1999 Concise Oxford Dictionary defines 'individual' as:

"*n.* **1** single human being or item as distinct from a group... **2** a distinctive or original person"

8. The principle of interpretation, *noscitur a sociis* (words are known by the company they keep), is relevant here. The first point is that Parliament plainly chose not to use the defined term 'person' in section 14(3)(b). Secondly, 'individual' means a natural person in the context of section 122 and a similar interpretation should apply to section 14(3)(b).

9. Therefore, a person is protected from the statutory prohibition in s.14(2) by the exemption in s.14(3)(b) but only if the person is providing for a natural person's domestic needs or for his or her animals for the purpose of section 14(3). Conversely animals owned by a person that is not a natural person (including a group of persons or partnership) are not "an individual's animals" for the purpose of section 14(3)(b) and the exemption does not apply. Note that section 14(3)(b) does not use the plural possessive case. In HRC's experience most dairy enterprises are not based on a sole proprietor model and therefore seldom are dairy herds an individual's animals.

10. If an individual owns the animals, there is no limitation on number of animals to qualify, for exemption under section 14(3)(b). In the context of an individual's needs in section 14(3)(a) there is an adjectival qualification, "domestic needs". There is no adjectival qualification to "an individual's animals" such as the use of the term 'domestic animals'. There is no practical means of determining a numerical limit for "an individual's animals". An interpretation that involves a numerical limit would be both impractical and contrary to the plain and ordinary meaning of s.14(3)(b).

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