

Select Committee releases report on the Resource Management Amendment Bill

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The Select Committee report in relation to the Resource Management Amendment Bill, has recently been released. We summarised the changes originally introduced by the Bill in our 23 September 2019 [alert](#).

The Select Committee recommended most of the changes be adopted with some minor tweaks to definitions or terminology. In other cases, the Select Committee recommended some sections should not be adopted or proposed new sections to aid clarity. The changes can generally be split into procedural and substantive changes.

Procedural Changes

Under the Bill, applicants could suspend non-notified consent applications for up to 20 working days. This would sit alongside the current ability of applicants to suspend notified resource consents for up to 130 working days, depending on what other 'breaks' there have been in the process. The Bill would also enable councils to suspend statutory time periods for processing resource consent applications until fixed administration charges are paid.

For both of these changes, it is recommended the regime comes into effect three months after commencement of the Bill, to ensure councils can update their processes and procedures.

The Bill seeks to enable the Environmental Protection Authority (EPA) to take enforcement action, including intervening in cases to become the lead agency. New section 343G(3) would enable a local authority to take its own enforcement action where the EPA ceases intervention. The Select Committee has recommended clarifying that if the EPA ceases intervention, the local authority can **resume** any enforcement action it had commenced prior to the EPA's intervention.

Substantive Changes

The most substantive change under the Bill is the introduction of a freshwater planning process that all freshwater planning instruments will have to be developed under. The intention of this is to assist councils to meet the 2025 deadline for implementing the requirements of the National Policy Statement for Freshwater Management, which is in the process of being amended. The existing optional collaborative planning process is proposed to be repealed.

Key introductions include:

- Introduction of a Chief Freshwater Commissioner who would convene freshwater hearings panels
- Empowering freshwater hearings panels to hear submissions and make recommendations to the relevant council on freshwater planning instruments
- Appointment of a chairperson of freshwater hearings panels. Before appointing a chairperson, the Chief Freshwater Commissioner must consider the desirability of that chairperson having expertise on judicial processes and cross-examination.

The general process involves regional councils preparing, notifying and calling for submissions on their freshwater planning instruments. The matter would then be referred to the Chief Freshwater Commissioner to convene a freshwater hearings panel to make recommendations. Councils will make a decision based on the recommendations. Appeal rights are limited to questions of law to the High Court if the council accepts the panel's recommendations. However, council decisions rejecting panel recommendations can be appealed to the Environment Court on merit.

The Select Committee endorsed this process at the conceptual level, with its recommendations focusing on amendments to existing definitions or new definitions for clarity (such as a new definition for 'freshwater planning instrument').

Finally, the Select Committee also recommend that statutory barriers on considering the effects of climate change under the RMA should be removed. Key changes include:

- Requiring councils and other decision-makers to have regard to emissions reduction plans and national adaptation plans

published by the Minister for Climate Change when making planning documents

- Repealing section 104E which currently prevents decision-makers from considering effects on climate change when assessing resource consent applications to discharge greenhouse gases.

These barriers will be removed from 31 December 2021 to ensure sufficient time to make policy arrangements, except that large-scale projects may be called in from the date of the Bill's commencement to enable a board or inquiry or Environment Court to consider effects on climate change.

End note

The Select Committee's report was followed closely by the recent release of the *Our Freshwater 2020* report (by the Ministry for the Environment and Statistics NZ). It is quite possible this report will also influence the amendment process as it proceeds.

On a separate but related matter, the Government has strongly hinted at further changes to the RMA to facilitate economic recovery from the COVID-19 crisis.

In short, we expect to see more developments in this area – with economic recovery amendments taking centre-stage in the immediate future. It may be that the COVID-19 crisis will raise more pressing issues that the Government may want to address in the RMA.

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