
ENVIRONMENT/ RESOURCE MANAGEMENT

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RMA REFORMS SIGNAL A STEP IN THE RIGHT DIRECTION



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Bell Gully welcomes the Government's announcement yesterday that it will be embarking on a significant series of reforms to the Resource Management Act (RMA).

The RMA has been a key barrier to investment in infrastructure – delaying the decision-making process and creating uncertainty for investors and the public.

In keeping with its pre-election promise, the Government released a summary of proposed changes to the RMA yesterday, and confirmed that it expects to introduce a Bill into Parliament in mid-February for enactment by August/September. A second raft of changes requiring more detailed consideration will follow later in the year. A brief commentary on the key changes is set out below.

Removing anti-competitive and frivolous objections

The amendments propose to address this by allowing the Environment Court to award security for costs, raising the filing fee from \$55 to \$500 for the lodgement of appeals and allowing applicants to potentially recover all the damages associated with an appeal brought by a trade competitor. However, the key question is – how will the court determine an anti-competitive or frivolous objector? Will there be specific criteria? To date, trade competitors have not

been denied the opportunity to participate if they raise a “legitimate” RMA issue.

Streamlining consenting processes

The core objective of this round of reform is to make it easier to undertake infrastructure projects of national significance. The new range of options available for consent processing is a welcome opportunity for applicants to select the one that best suits their project and requirements. Some of the key changes proposed include:

- Provision to make applications directly to the Environmental Protection Authority (EPA), which is to be established in a shadow form in this round of reforms and fully implemented in stage two. The new regime has an additional criterion to the existing “call in” powers that is based on the operational infrastructure needs of a nationwide network utility operator. A new time-limit of nine months is introduced for a final decision on an application for a major project, unless the Minister extends the timeframe. While the details of how the EPA will be appointed and operate are still unclear, the infrastructure sector will welcome the chance for



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direct referral.

- Providing applicants or submitters with a right to choose that local authority-level decisions on notified applications are considered by an independent commissioner(s), selected by the local authority from people in the “Making Good Decisions” programme database. This is likely to meet the objective of reducing the influence of local politics on decision-making, however the requestor is liable for any costs.
- Applicants for resource consent and notices of requirement may request that their application be determined by the Environment Court without the need to go through the local authority consenting process, provided that the local authority has agreed. Given that history has shown that sometimes local authorities are reluctant to concede control of processing applications, it is hoped that commonsense prevails.

Reducing delays in introducing plans and plan changes

Amendments to reduce delays in the introduction of new regional and district plans and plan changes should refine the submission process. This includes removing the ability for appellants to make general challenges or ones that seek the withdrawal of entire proposed policy statements and plans. However, it is unclear whether removing the non-complying activity category will improve matters. How will councils consider the status of activities that have not been specifically considered or provided for? It is possible that we will simply see the development of two de-facto categories of discretionary activity – those expressly provided for and those arrived at by default.

Preparing plans

A number of proposals will improve the efficiency of all territorial authorities to produce plans, these include:

- enabling the regional council and all territorial authorities of a region to combine to produce a single RMA planning document;
- enabling national policy statements to direct that a local authority must change the objectives and policies of policy statements and plans without the need for further local planning processes;
- removing the requirement for territorial authorities to review their plans every 10 years; and
- establishing that rules in proposed plans will have no legal effect until the decisions made on submissions have been notified.

Limiting appeals to questions of law

The proposal to limit appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought leave of the Environment Court, is concerning as it places undue reliance on the quality of decision-making by territorial authorities.

Further submissions

Removing the right to make further submissions on planning documents will require careful consequential management of the scope of jurisdiction and ability of parties to meaningfully participate in issues raised by other planning participants and to raise alternative solutions.

Other amendments

Other more minor amendments seek to improve the overall planning framework



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and consent processing by:

- removing the ability for blanket tree protection rules to be imposed in urban areas;
- limiting the ability of consent authorities to make repeated requests for further information;
- providing the Minister for the Environment and the Minister of Conservation with powers to cancel, postpone and restart a national policy statement development process that has already commenced at any time before it is gazetted. This effectively clarifies that a new government is not obligated to proceed with processes started by a prior government;
- amending the penalties able to be imposed under the RMA will give the courts wider powers particularly to allow the court to have the power to require a review of a resource consent held by an offender, and raising the maximum fine for offences under the RMA to \$600,000 for corporate offenders, and up to \$300,000 for private individuals. Although, in reality, the maximum fines have rarely been imposed;
- allowing enforcement actions to be taken against the Crown by local authorities; and
- requiring all councils to develop a discount policy for the late processing of consent applications will be an incentive to speed-up consent processing. Councils must also have a complaints process, and where the local authority is at fault, the applicant will receive a discount on the application processing fees and charges.

The next phase

The second phase of reform later this year is to include:

- establishing the structure of the Environmental Protection Authority;
- issues relating to aquaculture;
- improving fresh water allocation and management; and
- encouraging greater collaboration in city development and urban design.

Bell Gully looks forward to a vigorous debate on the proposed reforms and will be actively involved in each stage of the reform process.

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