

RESOURCE MANAGEMENT AMENDMENT BILL 2019

TO: The Environment Select Committee

**Submission on behalf of the
Resource Management Law Association of New Zealand Inc**

Introduction

1. This Submission is made by the Resource Management Law Association of New Zealand Inc (RMLA).
2. The RMLA is concerned to promote within New Zealand:
 - a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework
 - b. Excellence in resource management policy and practice
 - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,000 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.
4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed legislation. It should also be noted that a number of members may be providing their

own individual feedback and those may represent quite different approaches to the views expressed here.

5. RMLA's main objective in making submissions on Government proposals is to ensure that a coherent and workable body of resource management and environmental law and practice is developed in New Zealand. As a result it is not the RMLA's practice to make submissions in opposition. Instead, submissions should focus on what (if any) changes should be made to the proposal to ensure that it will:
 - a. Be consistent with the general framework of existing laws and policies and legally sound;
 - b. Be practicable, effective and efficient;
 - c. Assist in promoting best practice;
 - d. Produce high quality environmental outcomes.

SUBMISSION

6. The RMLA generally supports the intent of the Bill, which is to:
 - a. Reduce complexity, increase certainty, restore public participation opportunities and improve processes under the RMA; and
 - b. Support the urgent need to improve freshwater management and outcomes in New Zealand.
7. As outlined in its submission on the Resource Legislation Amendment Bill 2015 (as it then was), the RMLA considers that some of the amendments made to the RMA by the Resource Legislation Amendment Act 2017 (RLAA) resulted in changes which rendered the RMA unnecessarily complex, reduced public participation, limited the role and scope of the Environment Court and inappropriately aggregated significant power to the Minister for the Environment. Accordingly, RMLA generally supports the amendments to roll-back those particular changes. It also generally supports the proposals for improving freshwater management included in the Bill.
8. Against that general position, RMLA wishes to comment on the following aspects of the Bill in more detail:
 - a. Reinstatement of notification and appeal rights relating to applications for boundary activities.
 - b. Increased enforcement measures.
 - c. Improving freshwater management.

Notification and appeal rights relating to boundary applications

9. The Bill proposes to repeal the preclusions on notifying and appealing decisions regarding certain applications for subdivision and residential activities, as introduced by the RLAA. Similar restrictions currently also apply to notifying and appealing decisions on applications for “boundary activities”, as that term is defined in section 87AAB of the RMA. The RMLA notes that while the Bill does not propose to repeal these restrictions, no reasons have been provided for why they have been excluded, particularly as to why an applicant for a boundary activity should not be entitled to appeal against an application which is declined.
10. If the Bill is not amended to also address boundary activities, the RMLA considers it would be useful for the Select Committee to consider and explain why those activities are proposed to be treated differently from subdivision and residential activities.

Increased enforcement measures

11. The RMLA generally supports the following proposals from the Bill, all of which are intended to strengthen the current enforcement regime:
 - a. Empowering the Environmental Protection Agency (EPA) to initiate, assist with and intervene in enforcement action, in appropriate cases.
 - b. Requiring Councils to report on enforcement actions taken.
 - c. Providing that convicted defendants can be ordered to contribute towards the costs of prosecution.
 - d. Increasing the statutory limitation period from 6 to 12 months and raising maximum infringement fees.
12. That said, the RMLA considers that it will be important for the Select Committee to give careful consideration to how some of these proposals will work in practice, particularly around the EPA’s proposed enforcement role and how this will work in with the existing functions of local authorities. For example, there is no requirement for the local authority to agree to the EPA taking over enforcement action already commenced by the local authority, whereas agreement is required where the EPA wishes to assist a local authority with an enforcement action. Without the local authority’s agreement, there is the potential to undermine the integrity of an existing process and / or the future credibility of a local authority as an enforcement agency. Local authorities may be better placed to undertake enforcement action, given their knowledge of local circumstances, provided they have the appropriate support and resourcing. It will also be important to ensure that the EPA is adequately resourced to carry out CME functions.

13. The RMLA has had the benefit of reviewing an advanced draft of the submission to be lodged on the Bill on behalf of the New Zealand Law Society (NZLS) and generally agrees with the issues it raises in this regard.

Improving freshwater management

14. The RMLA generally supports the new freshwater planning process as proposed in the Bill, including the following:
 - a. Councils being required to notify changes to their regional policy statements and regional plans (freshwater planning instruments) to implement the refreshed National Policy Statement on Freshwater Management by 31 December 2023 and make final decisions on those changes by 31 December 2025.
 - b. Freshwater hearings panels (Panels) comprising up to five freshwater hearings commissioners, which have the ability to direct conferencing of experts, appoint special advisors, allow cross-examination and facilitate alternative dispute resolution (including mediation).
 - c. Panels being required to provide recommendations to the relevant council on submissions and any related freshwater planning matters and being able to recommend changes to the freshwater planning instrument, including changes which are out of scope.
 - d. Councils being required to make decisions on the Panel's recommendations within 20 working days and being able to accept or reject those recommendations, with reasons.
 - e. Restricted rights of appeal from the Council's decision on the Panel's recommendations, similar to those that were provided with respect to the now partly operative Auckland Unitary Plan.
15. However, as with the proposed improvements to the enforcement regime, the RMLA notes that there are several aspects of this new planning process which would benefit from further clarification, to ensure they can be implemented in practice. Again, RMLA generally agrees with the issues raises in this regard in the NZLS submission.

16. If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.

A handwritten signature in blue ink, appearing to be 'MH', is positioned above a horizontal line.

Mary Hill on behalf of the Resource Management Law Association

Date: 7 November 2019

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