

Departmental Disclosure Statement

Resource Management Amendment Bill

The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 September 2019

Contents

Final Sign-off.....1

Contents2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information.....7

Part Three: Testing of Legislative Content.....11

Part Four: Significant Legislative Features.....14

Part One: General Policy Statement

The overarching objectives of the Resource Management Amendment Bill (the Bill) are to reduce complexity, increase certainty, restore public participation opportunities, and improve Resource Management Act 1991 (RMA) processes. The Bill also supports the urgent need to improve freshwater management and outcomes in New Zealand.

The Bill principally amends the RMA and the Resource Legislation Amendment Act 2017 (RLAA). The Bill includes consequential amendments to the District Court Act 2016, Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, Remuneration Authority Act 1977 and the Judicial Salaries and Allowances (2018/19) Determination 2018.

Proposals

This Bill repeals a number of changes made by the RLAA, and provides a number of improvements and clarifications to existing RMA processes in relation to resource consents, compliance and enforcement, and Environment Court matters.

Reducing complexity, increasing certainty, and restoring public participation by repealing changes made by RLAA

Reducing the powers of the Minister for the Environment to prohibit or overturn local plan rules

Section 360D of the RMA enables regulations to prohibit or overturn rules in council plans that duplicate or overlap with other legislation. This Bill repeals the ability to make such regulations.

Removing preclusions on public notification and appeals for subdivision and residential activity resource consents, and restrictions on the scope of appeals

Certain types of resource consent applications cannot currently be notified to the public for submissions, or appealed to the Environment Court by applicants or submitters. The Bill re-enables submissions and appeals when appropriate, for subdivision and residential activity applications, and removes the ability for regulations to prevent notification of other types of applications. The Bill also reintroduces the ability for submitters to appeal resource consent decisions regarding issues that were not included in their original submission.

Repealing the regulation-making power for additional fast-track activities

District land use resource consent applications with a controlled activity status are subject to a 10 working day 'fast-track' process, rather than the standard 20 working day process. The Bill repeals the ability to fast-track other types, or classes, of activities, or to prescribe information requirements for fast-track applications, by regulation.

Reversing the change to the subdivision presumption

Under the original RMA, subdivision was presumed to be restricted unless explicitly permitted by a district plan rule. The RLAA reversed this, so that subdivision would be permitted unless explicitly restricted by a district plan. This Bill reinstates the original presumption, which existing district plans were initially formulated under.

Reinstating the use of financial contributions except for notices of requirement lodged by Minister of Education and Minister of Defence

Consent authorities can currently require resource consent holders to pay financial contributions (money or land) as consent conditions, in particular circumstances. The RLAA contains provisions to phase out financial contributions, so that consent authorities would no longer be able to require these from April 2022 onwards. The Bill repeals the relevant RLAA provisions, so that consent authorities can continue to charge financial conditions after April 2022.

In order to avoid a risk that unreasonable delays and costs are imposed on the development of Crown assets (including new state schools and defence facilities), the Bill restricts the ability to recommend or impose financial contribution conditions on any notices of requirement lodged by the Minister of Education or the Minister of Defence, as a requiring authority.

Improving resource management processes and enforcement provisions

Enabling applicants to have the processing of non-notified resource consent applications suspended

Resource consent applicants are currently able to suspend processing of their limited and publicly notified applications for up to 130 working days, by request to the consent authority. The Bill enables applicants to also suspend processing of their non-notified applications, for up to 20 working days.

Enabling consent authorities to suspend processing resource consent applications until fixed administrative charges are paid

Consent authorities are able to fix, in advance, charges payable by resource consent applicants to cover processing and administration costs. The Bill enables consent authorities to suspend their processing of resource consent applications, and pause the applicable statutory timeframes, when fixed charges payable at lodgement or notification are outstanding (until they are paid).

Extending the time period to lodge retrospective resource consent applications for emergency works

During states of emergency, persons exercising emergency powers can undertake particular activities without being subject to the general restrictions of the RMA. In these situations, the person must (a) advise the relevant consent authority of their activity, and then (b) apply retrospectively for any necessary resource consents within 20 working days. The Bill extends this period to 60 working days.

Enabling the review of conditions of multiple resource consents concurrently

The Bill makes three amendments to provisions for review of consent conditions, in response to new regional plan rules relating to freshwater. The Bill:

- makes explicit that, in response to a rule, a regional council can review conditions of multiple consents concurrently
- allows regional land use consents to be reviewed
- allows these reviews to be initiated as soon as the relevant rule is operative (even if other rules in the plan are, for example, still under appeal).

Increasing maximum infringement fees under the RMA

The current maximum infringement fees able to be set in regulations under the RMA are \$2000 for stock exclusion infringement offences, and \$1000 for all other infringement

offences. Specific infringement fees are set in the Resource Management (Infringement Offences) Regulations 1999. The Bill increases the maximum infringement fees able to be set in regulations under the RMA. The Bill, as introduced, includes the following proposed figures:

- \$2000 for natural persons and
- \$4000 for all other persons (for example, companies or trusts).

Extending the statutory limitation period to file charges for prosecutions under the RMA

Currently a six-month statutory limitation period applies for a person to file charges for certain offences under the RMA. The Bill increases this to 12 months, which is consistent with the statutory limitation period under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Enabling the Environmental Protection Authority to take enforcement action under the RMA

Responsibility for enforcement under the RMA generally sits with local government. The Bill empowers the Environmental Protection Authority (EPA) to also undertake investigation and enforcement actions under the RMA. This is to enhance accountability and provide support for those currently responsible for RMA enforcement. Specifically, the Bill provides for the EPA to:

- appoint enforcement officers
- apply to the Environment Court for declarations
- commence investigation and enforcement actions where no council is involved
- assist councils in investigation and enforcement actions already underway
- intervene, and 'take over' the investigation and enforcement functions of councils in relation to specific cases, with procedures to be followed in such cases
- apply to the court to recover just and reasonable costs of investigations and prosecutions from convicted offenders
- gather information from councils to exercise enforcement functions
- report on actions taken under this enforcement function in its annual report, including the outcomes of these actions (where it would not prejudice the maintenance of law).

Protecting special advisors to the Environment Court

The Environment Court can appoint special advisors to provide technical assistance in complex cases. Technical advisors in other jurisdictions are protected against legal proceedings for actions they take while acting in good faith in the performance of their duties. The Bill gives special advisors to the Environment Court similar protection from legal proceedings.

Change in title for Principal Environment Judge

The Bill changes the title of the Principal Environment Judge to Chief Environment Court Judge to better reflect the role and responsibilities of the head of a Court.

Alternate Environment Judges

The Bill also makes two amendments relating to the appointment of alternate Environment Judges. The Bill:

- clarifies that acting Māori Land Court Judges and acting District Court Judges may be appointed as alternate Environment Judges

- enables retired Environment Judges (who are not already Māori Land Court Judges or acting Māori Land Court Judges, District Court Judges or acting District Court Judges) to be appointed as alternate Environment Judges, if the Chief (formerly Principal) Environment Court Judge is satisfied that this is needed for operation of the Environment Court.

Clarification of the process for making national environmental standards

A single board of inquiry process may be followed to make a national environmental standard (NES), a national policy statement (NPS), or both. The RMA prescribes final procedural requirements for the relevant Minister to follow in response to a board of inquiry's recommendations for an NPS, but not for an NES. The Bill makes a minor amendment to clarify that the same steps that apply to an NPS also apply to an NES.

Improving freshwater management

New specialised planning process for freshwater

To support the urgent need to improve freshwater management, the Bill provides a new plan making process which councils must use for proposed regional policy statements or regional plans (or changes) for freshwater. The Bill requires that councils notify changes to their regional policy statements and regional plans to implement the National Policy Statement for Freshwater Management (NPS-FM) no later than 31 December 2023, and make final decisions by 31 December 2025.

The Bill provides for the Minister for the Environment to appoint freshwater commissioners, chaired by a retired or current Environment Judge. Hearing panels are to be then convened. Each panel will generally comprise two freshwater commissioners, two accredited local councillors (or commissioners nominated by council) and one accredited person with an understanding of tikanga Māori and mātauranga Māori (selected from nominations from local tangata whenua). These panels will have enhanced hearing powers, including directing conferencing of experts, appointing special advisors, cross examination and mediation.

Each panel must provide recommendations to the relevant council on submissions and any related freshwater planning matters, and can recommend changes to the proposed documents. The council must make decisions on the panel's recommendations within 20 working days, and can accept or reject (and provide alternative provisions).

The Bill provides for merits appeals to the Environment Court on those parts of the panel's recommendations that were rejected by the council, and further appeals on points of law to the High Court. Where the council accepts the panel's recommendations, the Bill enables appeals to the High Court on points of law and further appeals to the Court of Appeal (subject to leave being granted).

Repealing and replacing the Collaborative Planning Process

To reduce complexity, the Bill repeals the collaborative planning process that was introduced by the Resource Legislation Amendment Act 2017, which will be replaced in Part 4 of Schedule 1 of the RMA by the new freshwater planning process.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>A number of proposals in this Bill are to reverse amendments that were made through the Resource Legislation Amendment Act 2017. Submissions from that Bill process were used to inform the policy proposals for this Bill. The Ministry for the Environment's departmental reports to the select committee provide advice in response to submissions on those proposals. These are available on the Parliament website at:</p> <ul style="list-style-type: none"> Ministry for the Environment, Resource Legislation Amendment Bill - Departmental Report (No. 1), 9 Feb 2017 https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/51SCLGE_ADV_00DBHOH_BILL67856_1_A4526813/departamental-report-no-1 Ministry for the Environment, Resource Legislation Amendment Bill - Departmental Report (No. 2), 9 Feb 2017 https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/51SCLGE_ADV_00DBHOH_BILL67856_1_A530897/departamental-report-no-2 Ministry for the Environment, Resource Legislation Amendment Bill - Departmental Report (No. 2) Addendum, 9 Feb 2017 https://www.parliament.nz/resource/en-NZ/51SCLGE_ADV_00DBHOH_BILL67856_1_A547351/99cde7ff53b6ff68036da237b8bba0575a19ec8a <p>The following reports have been used to inform proposals that relate to compliance, monitoring and enforcement of the Resource Management Act 1991:</p> <ul style="list-style-type: none"> Ministry for the Environment, 2016, <i>Compliance, monitoring and enforcement by local authorities under the Resource Management Act 1991</i>, Wellington http://www.mfe.govt.nz/publications/rma/compliance-monitoring-and-enforcement-local-authorities-under-resource-management OECD (2017), OECD Environmental Performance Reviews: New Zealand 2017, OECD Publishing, Paris http://www.oecd.org/newzealand/oecd-environmental-performance-reviews-new-zealand-2017-9789264268203-en.htm <p>Data from the Ministry for the Environment's National Monitoring System has been used to inform policy proposals in this Bill, as detailed in various aspects of the RISs (linked in 2.3 below): http://www.mfe.govt.nz/rma/national-monitoring-system/data-explorer</p> <p>Regional councils' progressive implementation programmes, as required under the National Policy Statement for Freshwater Management 2014, informed policy development for the proposed freshwater planning process. This information is available on regional council websites.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<ol style="list-style-type: none"> 1. Ministry for the Environment, September 2018 (updated August 2019), <i>Impact Summary: Proposed bill to amend the Resource Management Act 1991</i> 2. Ministry for the Environment, June 2019, <i>Impact Summary: Additional proposals for proposed bill to amend the Resource Management Act 1991</i> 3. Ministry for the Environment, June 2019, <i>Impact statement – A new planning process for freshwater</i> <p>These RISs will be available at https://www.mfe.govt.nz/rma/improving-our-resource-management-system</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIA Team in the Treasury advised that its analysis role could be completed by the Regulatory Impact Analysis Panel of the Ministry for the Environment (the Panel).</p> <ol style="list-style-type: none"> 1. In respect of RIS 1 (September 2018), the Panel gave the following opinion: <p><i>“The Panel has reviewed the RIS and considers that it partially meets the quality assessment criteria.</i></p> <p><i>The RIS is written clearly and concisely and does enough to make the case for the recommended options with the elements of the proposals being clear and the potential impacts having been identified.</i></p> <p><i>The Panel acknowledges that the future costs are difficult to estimate in terms of reliable and meaningful figures for costs that will be incurred by local government, and also for the users of the resource management system. This in turn affects the ability to assess any potential impact on individual sectors, although the impact on sectors could be further elicited through any consultation and engagement by the Select Committee when it considers the draft bill. Any subsequent implementation of the proposals will help improve their effectiveness, including working closely with local government. The uncertainties around impacts could also be addressed through further monitoring and evaluation after the changes are in place.”</i></p> <p>RIS 1 was updated in August 2019 to include the proposed restriction of the ability to recommend, or impose, financial contribution conditions on notices of requirement lodged by the Minister of Education. The Panel reviewed the updated RIS, and did not change its overall assessment as a result.</p> 2. In respect of RIS 2 (additional proposals, June 2019), the Panel gave the following opinion: <p><i>“The Panel considers that it meets the quality assessment criteria.</i></p> <p><i>The RIS is written clearly and concisely and does enough to make the case for the recommended options with the elements of the proposal being clear and the potential impacts having been identified. The problem definition is clearly articulated and the analysis and advice is commensurate with the issues considered within the scope of the regulatory change. The RIS convincingly explains the likely impacts and costs of the preferred option, to the minimum statutory requirements.</i></p> <p><i>The RIS draws from engagement undertaken to date with potentially affected parties, including local government and the EPA. The input and feedback received on the proposal and its potential impacts has been reflected in the analysis.”</i></p> 3. In respect of RIS 3 (freshwater planning process, June 2019), the Panel gave the following opinion: <p><i>“The Panel considers that it partially meets the quality assessment criteria:</i></p> 	

The RIS is clearly presented and is concise in explaining the problem associated with the plan-making process, and in setting out options to improve the system. The analysis of the options is sound, but falls short of fulfilling all of the RIS criteria due to the lack of consultation with some affected groups as discussed below.

There is a recognised need for urgent action for the implementation of the NPS-FM. In considering options for improving the process for plan-making, consultation has been undertaken with central government agencies and local government, including regional councils. Government advisory groups on freshwater reform, such as KWM, were engaged with on the proposal. KWM includes members with experience in the primary sector and agribusiness, freshwater science and mātauranga Māori, local government, resource management law and policy, and whānau and hapū advocacy. However, there has not been formal consultation ahead of Cabinet decisions with tangata whenua (iwi and hapū themselves), primary producers, key environmental NGOs or RMA practitioners in general.

A similar hearings based process was instituted for the Auckland Unitary Plan and the streamlined planning process, however it is not a default setting and proposals could have been consulted on. Given the significance of water, especially to tangata whenua and primary users, this limited consultation is considered to be significant. While there is an opportunity for these groups to engage through the select committee process for the Bill, this is not on its own considered sufficient to cover the approach to consultation prior to Cabinet decisions.

However, we note that two significant consultation processes are proposed to address the lack of consultation. From early July through to mid-August there is targeted consultation planned on the comprehensive review of the RMA, which will include discussion of the freshwater planning process. In addition, the Essential Freshwater programme will run from August to October and include wide ranging public consultation, as well as targeted hui with iwi/hapū and primary sector groups and will include a detailed description of these specific proposals. The feedback from these consultations will be collated by MfE and passed on to the Select Committee.

Subject to consultation on this proposal being sufficiently captured through these processes the Panel is satisfied that the RIS partially meets the RIS criteria."

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>RIS 1 (September 2018, and updated August 2019) included details of the following two previous proposals, which are not included in the Bill:</p> <ul style="list-style-type: none"> - enable the Environment Court to hear challenges to resource consent notification decisions by way of declaration - make explicit that deemed permitted activities do not contravene Part 3 of the RMA. <p>The first previous proposal above is not included due to the potential for additional process complexity in relation to the existing avenue for challenging these decisions (by judicial review to the High Court). The second previous proposal is not included as activities that are permitted under either section 87BA or 87BB of the RMA are no longer considered to be restricted by Part 3 of the RMA.</p> <p>The RIA team in the Treasury determined that two proposals in the Bill are not subject to the Regulatory Impact Analysis requirements:</p> <ul style="list-style-type: none"> - the proposal to clarify the process following a board of inquiry recommendation for a NES will have no, or minor, impacts on businesses, individuals or not-for-profits - the proposal to change the title of the Principal Environment Judge is suitable for inclusion in a Statutes Amendment Bill as provided for in Standing Orders. 	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Each of the RISs (linked above) include an indicative quantification of costs, or avoided costs, to councils using data obtained through the National Monitoring System (in section 4 of each RIS). The actual impact of the proposals will be better understood following public input through the Select Committee process.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) Effective compliance</p> <p>A range of proposals would require some action from local government to implement in order to achieve the policy intent. The majority of the proposals are 'enabling' in nature and will be relatively simple to implement, reducing current system complexity. The repeals on preclusions on notification will require consent authorities to adapt their practice, however this change largely reverts to previous law which consent authorities are well versed in. The Ministry for the Environment will provide updated guidance to support implementation of these proposals.</p> <p>The freshwater planning process requires regional councils to notify freshwater regional policy statement and regional plan changes by 2023, and make decision by 31 December 2025. The new process will assist councils to comply with the requirements of the National Policy Statement for Freshwater Management (NPS-FM). The Ministry has been tracking council progress in giving effect to the NPS-FM and the notification and decision timeframe will be challenging for some councils to meet. The Ministry for the Environment has received additional funding over the next four years to support councils in the development and implementation of freshwater plans.</p> <p>(b) Regulator effort</p> <p>The aim of the new compliance role for the EPA is to enhance compliance with the RMA generally. The effectiveness of this policy will be contingent on the EPA's exercise of this function as appropriate, which will involve working closely with local government (and in some cases intervening).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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None. We did not consider that the policy behind the Bill materially impacts on New Zealand's international obligations.
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Consistency with the Government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

<p>The proposals in the Bill have been assessed by Ministry for the Environment staff as being consistent with the principles of the Treaty of Waitangi. The proposals will not have any impact on Treaty settlements, or other arrangements between Māori and the Crown or those acting with authority from the Crown (including local government) under the RMA. Aspects of this bill that repeal changes that were made by the Resource Legislation Amendment Act 2017 were informed by submissions to the Select Committee, and analysis of those submissions.¹ For example, the consent notification preclusions, restrictions on appeals, and regulation making powers, that are proposed to be repealed, were widely opposed by iwi submitters on the Resource Legislation Amendment Bill.</p>
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<p>The proposed freshwater planning process was tested with Kāhui Wai Māori and discussed with the Freshwater Iwi Leaders Group.</p>
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<p>Treaty settlement arrangements which affect RMA planning processes can be incorporated into the freshwater planning process as appropriate on a case-by-case basis.</p>
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<p>There was no formal consultation with iwi or hapū before Cabinet policy decisions were made. However, the proposed freshwater planning process is outlined in the Essential Freshwater discussion document, and feedback received on the proposed freshwater planning process through that engagement (including targeted hui with iwi and hapū) will be passed on to the Select Committee to inform this process.</p>

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The advice will be available at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/

¹ Analysis and advice to the Select Committee on these matters, including in response to submissions from iwi, are available in *Departmental Report no.2 on the Resource Legislation Amendment Bill 2015*, Ministry for the Environment: www.parliament.nz/resource/en-NZ/51SCLGE_ADV_00DBHOH_BILL67856_1_A530897/eb114c7511b65e08cfc097c8fcbf6247e83f35ef

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(a) Infringement fees</p> <p>The Bill increases the maximum infringement fees payable under the RMA for infringement offences. Individual infringement fees, set in the Resource Management (Infringement Offences) Regulations 1999 for various offences, will not be amended through this Bill, but they may be reviewed and updated later in light of the increased maximum.</p> <p>(b) Jurisdiction of courts</p> <p>The Bill reintroduces rights to appeal to the Environment Court against consent authorities' decisions on resource consent applications for residential activities and subdivision, and reintroduces submitters' rights to appeal on matters raised outside the scope of their original submissions.</p> <p>The Bill also grants the Chief (formerly Principal) Environment Court Judge new jurisdiction to recommend the appointment of retired Environment Judges as alternate Environment Judges.</p> <p>The proposed freshwater planning process includes appeal provisions which differ depending on whether the regional council accepts or rejects the recommendations of the freshwater hearing panel. Where the council rejects panel recommendations, the right to a merits appeal in the Environment Court is provided, with a further appeal on a point of law in the High Court. Where the council accepts panel recommendations, there will be only point of law appeals to the High Court, and further to the Court of Appeal (subject to leave). These appeal provisions are more limited than the standard planning process under Part 1 of Schedule 1 of the RMA, but less limited than the streamlined planning process under Part 5 of Schedule 1.</p> <p>Any judicial review application to the High Court regarding matters considered through a freshwater planning process must be made at the same time that an appeal to the High Court on a point of law is made.</p>	
3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>During policy development, in relation to the proposal to increase infringement fees, the Ministry of Justice sought justification of why the current infringement fees are insufficient, what kind of offences might justify a higher fee (to provide a meaningful deterrent), and that enforcement agencies might find it difficult to determine whether a person is 'natural' or 'non-natural'. The Ministry for the Environment responded to the Ministry of Justice, and incorporated feedback into RIS 1. The suitability of particular infringement fees for various offences will be assessed if and when the actual fees are reviewed. The question of whether a person is 'natural' or 'non-natural' can be addressed through implementation guidance.</p> <p>The Ministry of Justice was consulted generally (alongside other agencies) in the development of the policy to reintroduce appeal rights for resource consent processes, and did not raise any concerns about these provisions.</p> <p>The Ministry of Justice was consulted (alongside other agencies) in the development of the policy to give the EPA an enforcement function, and was generally supportive of the proposed amendments.</p> <p>The Ministry of Justice was consulted on the proposed restriction on appeal rights in the freshwater planning process and expressed concern about incentivising acceptance of recommendations on the grounds of saving time and costs and increased risk of judicial review. The proposed appeal provisions are similar to those of the previous Auckland Unitary Plan process, and there was no evidence of an increase in judicial review proceedings in that process.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
The Bill introduces a new investigation and enforcement function for the Environmental Protection Authority (EPA). This includes enabling the EPA to collect information from councils about an individual it is investigating in relation to a potential offence under the RMA.	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner did not have any particular comments about these provisions.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry for the Environment has undertaken limited engagement with selected staff about how the proposals can work in practice, and their feedback has been taken into account. We have consulted the Ministry of Justice, Treasury, the Environmental Protection Authority and Crown Law in developing detailed policy proposals. Comments received by agencies were generally supportive of the proposed amendments.</p> <p>The Ministry for the Environment with the Environment Court on the proposal to protect special advisors from legal proceedings (which the Environment Court supports). The Ministry also consulted the judiciary on:</p> <ul style="list-style-type: none"> - technical details of the proposal to clarify that acting Judges may be appointed as alternate Environment Judges, which suggested that this issue be resolved by amending the RMA - the proposal to rename the head of the Environment Court. <p>Suggestions from the judiciary were incorporated into these proposals.</p> <p>The Ministry for the Environment and the Ministry of Education jointly worked on the proposal to restrict the ability to recommend, or impose, financial contribution conditions on any notices of requirement lodged by the Minister of Education. This proposal has subsequently been extended to the Minister of Defence. No consultation with territorial authorities has occurred on that aspect of the Bill.</p> <p>The proposed new freshwater planning process has been tested with advisory groups under the Essential Freshwater programme. Council planning practitioners have raised implementation issues to be addressed through non-statutory measures and support. The proposed freshwater planning process is also outlined in the Essential Freshwater discussion document, which is being consulted on between August and October 2019. Feedback on the proposal received through that engagement will be passed on to the Select Committee for this Bill for their consideration.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The Ministry for the Environment engaged selected council planning practitioners on technical aspects of the proposals, to ensure options are workable in practice, before their initial policy approval. Planning practitioners were generally supportive of the proposals.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Currently, consent authorities are able to charge financial contributions as conditions on resource consents under the RMA in particular circumstances.</p> <p>The Resource Legislation Amendment Act 2017 introduced a five-year phase out period so that consent authorities would no longer be able to charge these types of contributions from April 2022 onwards.</p> <p>The Bill repeals this phase out, to retain the current provisions for consent authorities to charge financial contributions, including the relevant safeguards that apply under section 108(10) of the RMA. No new powers will be introduced.</p> <p>The Bill expressly removes the ability for councils to recommend, or the Environment Court or boards of inquiry to impose, financial contribution conditions on notices of requirement lodged by the Minister of Education or the Minister of Defence.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill protects special advisors to the Environment Court, appointed under section 259 of the RMA, against action for anything they say, do, or omit to do, while acting in good faith in the performance of their duties.</p> <p>This policy is intended to remove a potential barrier to the appointment of independent specialist expertise, which the Environment Court may rely on to ensure robust decision-making in technical cases.</p> <p>We consider the risks of providing immunity to special advisors to be low, given they have technical expertise regarding the subject they are appointed to advise on, and will be required to act in good faith to receive this protection. Protecting special advisors from legal proceedings is consistent with the existing legal protections that apply to members of the Environment Court (under section 261 of the RMA), and to technical advisors in other jurisdictions (such as section 164 of the Senior Courts Act 2016).</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill repeals three existing regulation making powers under the RMA that were enacted through the Resource Legislation Amendment Act 2017. These are:</p> <ul style="list-style-type: none">- section 360D: regulations that prohibit or remove certain rules- section 360G: regulations relating to fast-track applications- section 360H: regulations relating to notification of consent applications.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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