Departmental Disclosure Statement

Natural Environment 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.

8 December 2025

Contents

Part One: General Policy Statement

The Natural Environment Bill will replace the Resource Management Act 1991 (RMA), working in tandem with the Planning Bill. Once passed, the Bills will be known as the Natural Environment Act and the Planning Act.

The Natural Environment Bill and the Planning Bill provide distinct, but consistent, approaches for environmental management and land use planning, respectively. The Natural Environment Bill establishes a framework for the use, protection, and enhancement of the natural environment. The Planning Bill establishes a framework for planning and regulating the use, development, and enjoyment of land.

The development of the new planning and environmental management system created by these Bills was guided by the following objectives:

- to make it easier to get things done by—
    - unlocking development capacity for housing and business growth:
    - enabling delivery of high-quality infrastructure for the future, including doubling renewable energy:
    - enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining).

The intention is that these objectives will be done while also—

- safeguarding the natural environment and human health:
- adapting to the effects of climate change and reducing the risks from natural hazards:
- improving regulatory quality in the planning system:
- upholding Treaty of Waitangi settlements and other arrangements.

The Bills address multiple problems with the current planning and environmental management system. Together, they are expected to help to—

- reduce the number of consents needed by narrowing the type of effects that are regulated:
- make it easier to build homes and infrastructure by enabling the establishment of a clear set of rules under each Bill to guide councils and decision makers:
- increase consistency between council plans across the country through greater standardisation:
- reduce the number of council plans by providing for one plan per region that implements national instruments and includes spatial, natural environment and land-use plans in 1 place:
- safeguard the natural environment and human health by introducing an environmental limits framework covering air, water, land, soils, and indigenous biodiversity, and setting out a regime to manage resource use within these limits:
- make better use of data and technology to enable faster, more consistent planning decisions and make it easier to monitor performance and outcomes.

Omnibus Bill

This Bill is an omnibus Bill, as it amends more than one Act. It is introduced under Standing Order 267(1)(a) as the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy—to establish a new framework for the use, protection, and enhancement of the natural environment.

Proposals

System architecture

Alongside the Planning Bill, this Bill creates a system that will operate like a funnel, starting with clear goals that focus what can be considered at the top and each level of the system. The system architecture in the Bill comprises––

- a set of goals that tightly define the scope of the system:
- a set of national instruments, comprising:
    - national policy direction (NPD) that particularises the goals:
    - national standards that provide further detailed direction for implementing the NPD and clearer, more standardised direction for decision making and plans:
- a single combined plan for each region made up of three integrated components:
    - a regional spatial plan that implements the national instruments to support urban development and infrastructure provision within environmental limits; and
    - a natural environment plan under this Bill that implements spatial plans by applying standardised overlays, rules, and methodologies; and
    - and a land use plan under the Planning Bill that implements spatial plans by applying standardised zones, rules, and methodologies; and
- permits under this Bill and consents under the Planning Bill.

Each instrument must implement the one above it. (The land use plans and the natural environment plans operate at the same level of the 'funnel' under each Bill.)

Community engagement is intended to primarily occur during spatial and natural environment plan development rather than at the permitting level (as per the RMA).

This system architecture is intended to make the system simpler and more efficient, reducing relitigation of matters that have already been decided higher up in the system. The levels of the system are outlined in more detail below.

Purpose, goals and principles

Purpose

The purpose of the Bill is to establish a framework for the use, protection, and enhancement of the natural environment.

Goals

The goals of the Bill define the outcomes the planning system is trying to achieve. They will be particularised through the NPD, which directs how the goals must be achieved. Goals cannot be relitigated at lower levels of the system. All persons exercising or performing function, duties, or

powers under this Bill must seek to achieve the goals in accordance with the funnel provision. The goals of the Bill are to—

- enable the use and development of natural resources within environmental limits:
- safeguard the life-supporting capacity of air, water, soil, and ecosystems:
- protect human health from harm caused by the discharge of contaminants:
- achieve no net loss in indigenous biodiversity:
- manage the effects of natural hazards associated with the use and protection of natural resources through proportionate and risk-based planning:
- provide for Māori interests through—
    - Māori participation in the development of national instruments, spatial planning, and natural environment plans; and
    - the identification and protection of sites of significance to Māori (including wāhi tapu, water bodies, or sites in or on the coastal marine area); and
    - enabling the development and protection of identified Māori land.

The policy intention is that there is no inherent hierarchy within the goals.

Procedural principles

The Bill sets out procedural principles to guide how decisions are made across the system. These procedural principles are intended to ensure that decisions are made in a clear, timely, proportionate and evidence-based manner. The procedural principles also require that, when performing a function or exercising a power under the Bill, people act in an enabling manner that is consistent with other specified provisions.

Functions and powers of central and local government

Minister

Central government has a broader and more active role in shaping and overseeing the new system. The Minister is responsible for—

- recommending, making, and approving national instruments, including developing nationally standardised provisions, and methodologies, and monitoring their implementation and effect:
- setting through national standards, limits to protect human health for freshwater, coastal water, land and soil, and air and methodologies for regional councils to follow when setting ecosystem health limits through natural environment plans:
- recommending issue of, and monitoring the implementation of, water conservation orders:
- monitoring system performance and the effect and implementation of the Bill.

The Minister has the power to specify minimum levels for ecosystem health limits.

The Minister also has powers to intervene, including to—

- direct regional councils and territorial authorities to prepare a plan, plan change, or variation to a proposed plan to address an issue

The Minister may also exercise some powers set out in the Planning Bill as if they applied in relation to this Bill, including to—

- investigate and make recommendations on the performance or exercise by a local authority of any of its functions, duties, or powers under this Bill:
- appoint 1 or more persons to exercise or perform all or any functions, duties, or powers in place of a local authority:
- direct a local authority to achieve an outcome specified by the Minister.

The Minister has powers to recommend the making of regulations on a range of matters where these are contemplated in the Bill, such as processes and procedures related to—

- fees and charges, including cost-recovery:
- infringement offences and infringement fees:
- water permits and discharge permits:
- rules to be included in any natural environment plan or proposed natural environment plan:
- prescribing harmful substances or hazardous waste:
- criteria for the exercise of hearings:
- compliance and monitoring:
- prescribing long-lived infrastructure:
- freshwater farm plans and requirements for stock exclusion from water bodies:
- permit processing:
- emergency response and recovery:
- prescribing harmful substances or hazardous waste:
- anything this Bill says may or must be provided for by regulations.

Minister of Conservation

The Minister of Conservation will have the responsibilities, duties and powers that a regional council would have under the Bill in respect of coastal marine areas of specified offshore islands.

Minister responsible for aquaculture

The Minister responsible for aquaculture will have powers to recommend the making of regulations on several matters, including—

- amending provisions in operative plans relating to aquaculture activities in the coastal marine area:
- establishing rules for allocation of specified aquaculture-related authorisations:
- amending natural environment plans in relation to aquaculture activities and allocation processes.

In some cases, the Minister responsible for aquaculture may also direct regional councils to process and hear together applications for coastal permits to occupy space for aquaculture activities in the common marine and coastal area.

Ministry for the Environment

The chief executive of the Ministry for the Environment must produce a system performance report every 3 years. They may also undertake a strategic review of any aspect of the system under the Bill at the Minister's request or at the request of any entity performing or exercising functions, duties, or powers under this Act, or on their own initiative.

Regional councils

Under the Bill, regional councils will have a general responsibility to enable and regulate the use, protection, and enhancement of the natural environment within their regions. These responsibilities must be in line with any direction provided via higher order instruments, such as national instruments or the spatial plan. In undertaking their responsibilities, regional councils must regulate and manage—

- the quality and quantity of water and geothermal resources:
- the discharge of contaminants to land, air, or water:
- indigenous biodiversity:
- the coastal marine area, including coastal occupation:
- natural hazard risks as they relate to natural resources:
- soil conservation:
- the bed of any water body:
- the use of land where required for regulating the use of, and effects on, natural resources:
- the allocation of natural resources.

The functions of regional councils under the Bill are to—

- jointly make and maintain a spatial plan for the region with territorial authorities:
- set ecological health limits:
- make, maintain, and monitor the implementation and effectiveness of the natural environment plan for their region:
- regional councils will be the permit authority for their regions, will regulate and manage effects, and will undertake compliance monitoring and enforcement:
- regional councils are also responsible for keeping and maintaining certain records for each iwi and hapū within their regions.

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Environmental Protection Authority

The Environmental Protection Authority (**EPA**) may perform compliance and enforcement functions when necessary or desirable to promote the purpose of this Bill. In some cases, the responsible Minister may delegate functions, duties, or powers to the EPA, such as deciding whether to intervene in the enforcement actions of a regional council.

Effects

The Bill introduces a more targeted and proportionate approach to managing effects by narrowing the scope of effects that are subject to assessment and regulation. Under the Bill, activities that will have a less than minor effect will not be considered, unless they contribute to a cumulative effect. The new system will also allow effects to be avoided, minimised or remedied where practicable, and offset and compensated for where appropriate. National instruments will be enabled to set out how effects should be managed in certain situations. Together a narrower scope of, and higher threshold for, effects managed is intended to reduce the number of permits required by the system and enable a more permissive environment.

National instruments

National instruments will set out detailed objectives, policies, and standardised approaches for addressing national and regional priorities. National instruments will comprise the NPD and national standards.

Under the Bills, national instruments will be set by central government and implemented by local government through spatial plans and natural environment plans. Each Bill will have 1 corresponding NPD, which is intended to be a short, targeted document made up of objectives, policies, and directives that provide direction on the goals (such as environmental protection, economic growth, housing, and infrastructure), including how to manage conflicts between these matters. NPD will be implemented through standardised direction (such as standard zones, overlays, rules, and methodologies) set out in national standards. This is intended to create greater consistency across the system by providing standard approaches to planning and environmental management.

Environmental limits

The Bill requires environmental limits to be set for air, freshwater, coastal water, land and soil, and indigenous biodiversity. These limits are to protect both human health and the life-supporting capacity of the natural environment. There are two exceptions: no human health limit is to be set for indigenous biodiversity, and an ecosystem health limit is not compulsory for air quality.

The responsible Minister will set limits to protect human health, informed by Ministry of Health guidelines, through national standards. Regional councils will set ecological health limits in their natural environment plans following methods prescribed in national standards. The Bill enables the Minister to specify minimum levels for ecosystem health limits. If regional councils want to set less stringent limits for ecosystem health than a specified minimum level, then they must produce a justification report.

Allocation

Regional councils will be responsible for allocating natural resources through their natural environment plans. Natural resources can be allocated through permitted activities and permits granted in the order in which they are lodged with a council, as well as new allocation methods such as auctions, tenders, and comparative consenting. These new allocation methods cannot be used until they are introduced through national instruments. This is intended to make resource allocation more efficient, especially when resources are in short supply.

Natural resources that can be allocated include—

- the taking of water (including freshwater, geothermal, and coastal):
- heat or energy from water or the material surrounding geothermal water:
- discharges to air or water:
- occupation of space in the common marine and coastal area:
- natural materials such as sand, shingle, and shell in the beds of rivers and lakes owned by the Crown and the common marine and coastal area.

Combined regional plans

In the new system, there must be a combined plan for each region, at all times. A combined regional plan consists of the regional spatial plan, a land use plan for each district in the region under the Planning Bill, and the natural environment plan for the region under this Bill.

Natural environment plan-making

Under the Bill, regional councils will be required to prepare and maintain a natural environment plan as part of the combined regional plan. The purpose of natural environment plans is to enable and regulate the use, protection, and enhancement of natural resources within a region, and to assist regional councils in carrying out their functions and responsibilities. The plan-making process is designed to ensure consistency with national instruments and the regional spatial plan while providing for local input.

Councils will have two options when choosing content for their plans. They may select from nationally standardised provisions to efficiently assemble the plan's content such as overlays and rules. They may also create bespoke provisions, which must be supported by a justification report explaining why a departure from the standardised approach is necessary. The parts of plans that contain bespoke provisions are subject to merits submissions and appeals. In contrast, nationally standardised provisions would not require submissions on the substance of those provisions, and a simpler evaluation report would be required.

These processes are intended to speed up plan-making processes when using standardised content, while providing for local variation when justified.

Regulatory relief

This Bill refers to the Planning Bill for provisions relating to regulatory relief. The Planning Bill will introduce a regulatory relief framework that requires councils to consider the impact of certain planning controls on landowners when they are developing plans. Access to regulatory relief in this Bill is limited to planning controls that—

- have a significant impact on the reasonable use of land; and
- relate to land-based indigenous biodiversity, significant natural areas, or sites of significance to Māori.

Permitting

Under the Bill, resource consents will be replaced by permits. Activity classification will be simplified into 4 categories: permitted, restricted discretionary, discretionary, and prohibited activities. Each activity category will be subject to clear and distinct information and assessment requirements. Regional councils will be permit authorities whose permission is required to use a natural resource or undertake an activity for which a permit is required under the Bill. The new system will also only allow people who are materially affected to participate in the permitting

process by raising the threshold for identifying someone as an affected person to more than minor. Applications will only be publicly notified when adverse effects are significant and all affected persons cannot be identified, or the applicant requests it. This is intended to enable faster, cheaper, and more certain permitting while reducing the overall number of permits required by the system.

Planning Tribunal and the Environment Court

Planning Tribunal

The Planning Bill establishes a new Planning Tribunal, intended to provide for a faster, and more cost-effective, way of resolving certain, lower-level, disputes between system users and councils. This Bill enables people to access the Planning Tribunal for certain decisions made under the Bill. The Planning Tribunal is aimed at providing an additional accountability mechanism to help ensure that the new system delivers the desired shifts in planning practice. It will be established as a division of the Environment Court, with its own chairperson and pool of adjudicators.

Under this Bill, the key functions of the Planning Tribunal will include reviewing administrative decisions made in the processing of permits, for example, requests for further information, notification decisions, interpreting permit conditions, and being able to strike out permit conditions that are deemed to be out of scope of the system.

The Planning Tribunal will have streamlined processes to support the prompt resolution of matters. It will be able to confirm, modify, or quash the decision or aspect of decision being reviewed, or send matters back to a local authority for reconsideration. It will be empowered to regulate its own procedures. There will be a presumption that matters will be decided on the papers unless a hearing is considered necessary.

The Planning Tribunal will not have a role in hearing appeals on plans, designations and notified permits where there are third-party submitters, nor deal with enforcement matters. These will remain with the Environment Court due to the complexity and stakes involved in these appeals.

Environment Court

The Environment Court will continue to hear appeals on proposed plan and plan changes (although these are limited to points of law in relation to standardised provisions), appeals to notified permits or applications for reviews or changes of permit conditions where there are submitters on the applications. The Environment Court will also hear appeals on designations, and merits appeals on bespoke provisions in natural environment plans, as well as appeals on decisions of the Planning Tribunal on points of law and the issue of abatement notices. The Environment Court may also issue enforcement orders. The ability for the Environment Court to consider direct referrals and nationally significant proposals will be removed from the system.

Māori interests and the Treaty of Waitangi

The Bill contains a goal to provide for Māori interests through Māori participation in the development of the NPD and plans, the identification and protection of sites of significance, and enabling the development and protection of identified Māori land. Policies for this goal will be set through the NPD, which The Bill includes a descriptive Treaty clause that sets out how the Crown's responsibilities under the Treaty of Waitangi are provided for in the Bill through listed provisions. These include requirements to notify and consult iwi authorities during the development of national instruments and plans that councils will have to implement when developing plans.

The Bill includes provisions that address how Treaty settlement redress, Ngā hapū o Ngāti Porou arrangements, and Marine and Coastal Area Act 2011 rights interact with the new system, as follows:

- provisions that provide for statutory acknowledgement redress in the new system; and

- a provision that commits the Crown to work with post-settlement governance entities, and Ngā Hapū o Ngāti Porou, to seek agreement on how their Treaty settlement redress or arrangements will operate in the new system with the same or equivalent effect to the greatest extent possible; and

- before any agreement is reached, a provision that requires those exercising or performing powers, functions, or duties to give an effect that is the same, or equivalent, to the greatest extent possible as the effect the redress or arrangement has in relation to the RMA; and

- provisions that ensure the rights available under the Marine and Coastal Area (Takutai Moana) Act 2011 are maintained in the system.

The Bill contains a clause clarifying (for the avoidance of doubt) that the Bill does not create or transfer any proprietary right or interest or extinguish or determine any customary right or interest that may exist in freshwater or geothermal resources.

These provisions are intended to provide more certainty for all users of the system about how Māori interests and the Treaty of Waitangi are provided for.

Compliance monitoring and enforcement

The Bill retains and strengthens core compliance and enforcement components of the RMA. These are intended to prevent adverse effects and remedy harm that occurs, support information gathering to inform decision-making, enable a range of accountability mechanisms, and enable effective administration of compliance and enforcement and cost recovery.

Regional councils will be responsible for monitoring compliance with standards, rules, and permits and are enabled set charges to fund these responsibilities. They must respond proportionately, consistently, and reasonably to non-compliance using the powers and enforcement tools available to them under the Bill. Responding to non-compliance must be done in a way that gives effect to the purpose, goals, and procedural principles of the Bill. Regional councils must prepare and publish a compliance and enforcement strategy in accordance with the requirements set out in this Bill.

If necessary or desirable to promote the purpose of the Bill, the EPA may also perform some enforcement functions, including—

- taking any enforcement action where the local authority is not taking an enforcement action for the same incident:

- assisting the local authority with an enforcement action in relation to an incident and any subsequent action:

- intervening in, and taking over, a local authority's enforcement action:

- taking enforcement action against a regional council.

System monitoring and performance

Regional councils, the Minister, and the chief executive of the Ministry for the Environment all have system monitoring responsibilities under this Bill. Monitoring is expected to support continuous improvement in plan-making and implementation and will inform future plan reviews. The monitoring processes in the new system are designed to support the system performance and stewardship functions.

Regional councils

Regional councils are responsible for monitoring the whole or any part of the region as far as is appropriate to effectively carry out their functions and responsibilities under the Bill. This is

intended to ensure that natural environment plans are implemented as intended, and that plan outcomes are tracked over time. Regional councils' monitoring must include—

- the efficiency and effectiveness of limits, rules, or other methods in the regional plan:
- the performing or exercise of any functions and responsibilities under its plan or delegated or transferred by the regional council:
- the efficiency and effectiveness of processes used by the council:
- the exercise of permits in its region:
- the exercise of protected customary rights in the region, including any controls imposed on the exercise of that right under the Marine and Coastal Area (Takutai Moana) Act 2011:
- the implementation and effectiveness of any water conservation orders in the region.

Regional councils also have a duty to compile and publish a review of the results of monitoring undertaken no less than every five years.

Minister

The Minister is responsible for monitoring—

- the performance of the system, including monitoring the functions, duties, and powers performed or exercised by any person under this Bill:
- the implementation and effect of this Bill, regulations under it, the NPD, and national instruments:
- the relationship between the functions, powers, and duties of central government and local government:
- any significant land use matter as the Minister sees fit.

The Minister may investigate and make recommendations on councils' actions under this Bill. Where a council fails to perform or exercise any of their functions, duties, or powers under the Bill, the Minister may appoint one or more persons to do so instead.

Ministry for the Environment

The chief executive must prepare and maintain a system performance framework under this Bill. The purpose of the framework is to maintain regular strategic oversight of the system by—–

- improving understanding of whether and to what extent legislative and system outcomes are achieved:
- enabling continuous evidence-based improvements to the operation and implementation of the system:
- supporting continuous improvement in the way in which the legislation is implemented:
- establishing a process to identify and respond to emerging system-wide issues, including national direction outcomes.

In consultation with the Minister, the chief executive must set out key performance indicators for the framework. The chief executive may collect data from any entity that performs or exercises functions, duties, or powers under the Bill.

The chief executive must produce a system performance report every three years. This must provide advice on interventions within and outside the control of regional councils to manage environmental limits in an efficient and effective way, and whether additional government intervention is recommended. The chief executive must provide this report to the Minister as soon as practicable and make it publicly available.

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
An expert advisory group was established by the Government in September 2024 and given the task of preparing a blueprint to replace the Resource Management Act 1991. Its report is published: *Report from the Expert Advisory Group on Resource Management Reform. Blueprint for resource management reform: A better planning and resource management system 2025* https://environment.govt.nz/assets/publications/Final-EAG-Report.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
The Bill contains provisions that ensure that New Zealand's obligations in respect of the International Convention for the Prevention of Pollution from Ships (MARPOL), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention). The provisions currently in Resource Management Act 1991 are in Natural Environment Bill: see clauses 22-24, 283 and 284, 307(1)(o)-(q), 307(4) and 307(5). The Resource Management Act 1991 currently prohibits mercury mining (s 87B(4)). This was inserted in 2019 as part of New Zealand's implementation of the Minamata Convention on Mercury, which we have signed but not yet ratified. This provision is reflected at clause 35.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
National Interests Analysis on Accession to Annex VI of the International Convention for the Prevention of Pollution from Ships, Ministry of Transport, 3 October 2019: MARPOL-Annex-VI-National-Interest-Analysis.pdf, National Interests Analysis on the Minamata Convention on Mercury, Ministry for the Environment, 5 November 2013: National Interest Analysis on the Minamata Convention on Mercury - 5 November 2013 - Ministry for the Environment - Regulatory Impact Statement.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Ministry for the Environment prepared a regulatory impact (RIS) statement in March 2025, *Regulatory Impact Statement: Replacing the Resource Management Act 1991*, and a supplementary analysis report (SAR) was prepared in November 2025 *Supplementary Analysis Report: Replacing the Resource Management Act 1991*. These can be found at: Replacing the Resource Management Act (RIS – MfR) Replacing the Resource Management Act (RIS – MfE) Replacing the Resource Management Act (SAR – MfR) Replacing the Resource Management Act (SAR – MfE)	

2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
Both the RIS and the SAR were assessed for quality by cross-agency panels with members from the Ministry for the Environment and Ministry for Regulation as they did not meet the threshold for the Ministry of Regulation's assessment.	

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
Clause 128 provides that a natural resource permit may include a wildlife approval, which is a lawful authority for an act or omission that would otherwise be an offence under sections 58(1), 63(1), 63A, 64, 65(1)(f), 70G(1), 70P, and 70T(2) of the Wildlife Act 1953. This provision was added to the Bill after the SAR referenced in response to question 2.3 was finalised.	

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

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
Castalia, *Economic impact analysis of the proposed resource management reforms* (February 2025) Allen + Clarke, *Unlocking the benefits of Environmental Data for RM Reform* (June 2025) Martin Jenkins, *Economic Benefits of Effective Resource Management* (June 2025) Castalia, *Economic impact analysis of the proposed resource management reforms* (October 2025) Infometrics and Allen + Clarke *Economic Efficiency Assessment for a new Planning and Environmental Management System* (October 2025; updated in December 2025 to correct typographical error)	

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**
See page 53 of the SAR linked above (Matter 7: Compliance and Enforcement – Impact of decisions on this matter). See also Section 3 of the SAR for discussion of how central government will support local government and others to transition to and operate under the new resource management system.	

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?
As this Bill (alongside the Planning Bill) replaces the RMA we took steps to ensure that any provisions in the RMA that implement international obligations were transferred to this Bill, as appropriate. We reviewed the Ministry's register of international agreements related to the environment and identified where the changes to the planning and environmental management system may intersect with some of these commitments. We shared the draft Bill and the draft Planning Bill with the Ministry of Foreign Affairs and Trade and the Department of Conservation and held several meetings to explore the relationship between the Bills and our international obligations.

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?
Consideration of how the Treaty of Waitangi informs the proposed system has been informed by the work of the Expert Advisory Group, engagement with Māori groups, and advice from officials. In its Blueprint for resource management reform (2025), the Expert Advisory Group considered the nature of Treaty interests and rights within scope of the proposed environmental management and planning system. It found that "resource management in New Zealand is inherently connected to the recognition and protection of Māori rights and interests under the Treaty of Waitangi". Its report outlined findings of the Waitangi Tribunal about the deficiencies of the current system with respect to outcomes for Māori. Engagement with Māori on the reforms has involved meetings with some Post-Settlement Governance Entities (PSGEs) and groups yet to settle their historical Treaty of Waitangi claims. The focus of these discussions has been on how to approach upholding Treaty of Waitangi settlements and the Crown's obligations, which Cabinet agreed is a fundamental design principle of the Bills. The Crown has also met with representative groups including Te Tai Kaha (representing Kāhui Wai Māori, New Zealand Māori Council and the Federation of Māori Authorities) and Pou Taiao (National Iwi Chairs Forum) to discuss the proposed reforms. Feedback from engagement has informed advice to Ministers and is summarised in the Supplementary Analysis Report: Replacing the RMA (attached). This report contains analysis of the proposed policy's consistency with the Treaty principles and sets out options considered in this respect. The Bill describes how it recognises the Crown's responsibilities in relation to the Treaty of Waitangi. It includes a descriptive Treaty clause that lists provisions for this purpose and a system goal focused on providing for Māori interests. It also commits the Crown to engage with PSGEs to seek agreement on how settlement arrangements will operate with the same or equivalent effect in the new system to the greatest extent possible, and requires that prior to this agreement, persons exercising powers and functions under the Acts must, to the greatest extent possible, give Treaty settlement redress the same or an equivalent effect to the effect that redress has under the RMA. National policy direction relating to the Māori interests goal will also provide greater direction on provision for Māori interests in the new system.

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**
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/.	

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**
See Appendix One for response to these questions.	

3.4.1. Was the Ministry of Justice consulted about these provisions?	**YES**
See Appendix One for response to this question.	

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 provisions relating to personal information in the Bill are largely based on existing settings under the RMA. However, new features under the Bill, such as regulatory relief, introduce new uses of information, but the underlying approach is consistent with the way personal information is accessed and used – e.g. which generally relate to personal information being used to: apply for something, inform decision-making, and be notified of a decision. Relevant provisions can be found in Appendix One.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	**YES**
The Office of Privacy Commissioner (OPC) was provided an early copy of the Bill with a list of relevant provisions and raised no issues of significant concern regarding the Bills' consistency with the principles and guidelines set out in the Privacy Act 2020. The OPC noted it would support the addition of a power to redact submissions before they are published, to protect the privacy of natural persons. It noted this could be modelled on section 9(2)(a) of the Official Information Act 1982.	

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
High-level engagement was undertaken during policy development with a range of stakeholders from local government, business, development, energy and infrastructure providers, primary sector, resource management practitioners, non-government organisations, and with some post-settlement governance entities (PSGEs), Pou Taio, and Te Tai Kaha.	

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
Three members of the Expert Advisory Group (as referred to in response to question 2.1) worked with officials throughout the policy development of the Bill. They were Janette Campbell, Mark Chrisp and Gillian Crowcroft. Janette Campbell and Gillian Crowcroft and an independent legal expert, Aidan Cameron, Barrister, reviewed and commented on an early version of the Natural Environment Bill.	

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

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?	NO
The Bill does not introduce any taxes. It introduces powers to impose natural resource levies that are not in the nature of taxes (see clauses 313, 314, 333, 334). The levied amounts must not exceed the anticipated costs of relevant activities (clauses 314(2) and 314(3)) and the money may only be used to meet the costs of those same activities (clauses 333(4) and 334(3)). The Bill rolls over a provision in the RMA for the payment of rent or royalties related to the removal of sand, shingle, shell, or other natural material from any land under a coastal permit and any sum of money required by regulations to be paid in relation to geothermal permits (clause 323).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
See Appendix Two for responses to these questions.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill has one provision at Schedule 4, clause 6(3), to protect members of a special tribunal established to consider an application for a water conservation A member of a special tribunal would not be liable for anything the member does or omits to do in good faith in performing or exercising the functions, duties, and powers of the tribunal. The purpose of this provision is to protect the members from interference in carrying out their duties in good faith. Members would not be protected when they act in bad faith.	

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?	YES
See Appendix Two for response to this question.	

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?	YES
See Appendix Two for response to this question.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
In addition to the provisions noted in response to question 4.7, the Bill contains the following provisions empowering the making of delegated legislation: Clause 74 (Approval of national instrument) Clause 75 (Incorporation of material by reference in national instrument) Clause 305 (Emergency response regulations) Clause 307 (Regulations) [various matters] Clause 308 (Regulations relating permit processing time frames and procedures) Clause 309 (Regulations) [prescribing process for review of the conditions of coastal, water, discharge, or land use permit related to allocation of natural resource use activity) Clause 310 (Regulations amending natural environment plans in relation to aquaculture activities and allocation processes) Clause 313 (Regulations relating to natural resource levies) Clause 315 (Regulations relating to moneys collected from market based allocation mechanisms) Schedule 3, clause 10(2) (Power to give directions relating to allocation of authorisations for space provided for in natural environment chapter) [Coastal matters] Schedule 3, clause 52(1) (Order in Council may require holding of authorisation) Schedule 4, clause 13 (Making of water conservation order) Schedule 4, clause 15 (Revocation or amendment of water conservation order) Schedule 5, clause 15 (Regulations relating to freshwater farm plans)	

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?	YES
Clause 111 of the Bill applies Part 4 of Schedule 3 of the Planning Bill, which imposes an obligation on local authorities to prepare and notify a "relief framework" when preparing or deciding a proposed plan or private plan change that contains a specified rule (as defined in Schedule 3, clause 63 of the Planning Bill—see also the definition of specified topic in Schedule 3, clause 1(2) of the Planning Bill). The role of the relief framework is to assess the impact of certain types of rules on specified land in the region and provide relief to the landowner if the impact is assessed to cross a certain threshold. The relief that a local authority may consider include monetary payment, rates relief, additional development rights or waiving certain planning related fees.	

Appendix One: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4

3.4.(a)

Clause 278(1) creates the offences for contravening, or permitting a contravention, of:

- the relevant provisions of the Act that impose restrictions and duties in relation to land, the coastal marine area, the beds of certain rivers and lakes, water, and discharges of contaminants;
- any enforcement order;
- any condition of a natural resource permit
- any abatement notice
- a monetary benefit order
- a duty to comply with an enforceable undertaking;
- an adverse publicity order
- a water shortage direction
- any requirement or duty made in emergency response regulations.

Clause 278(2) creates the offence of contravening or permitting a contravention of statutory restrictions in the Act relating to dumping or incinerating waste or other matter in the coastal marine area.

Clause 278(3) creates the offence of discharging a harmful substance or contaminant or water in the coastal marine area from ships or offshore installations.

The offences in clauses 278(1), (2), and (3) may be proceeded against by way of a prosecution in a District Court, a fixed penalty infringement notice, or an application to the Environment Court to impose a pecuniary penalty (a “civil fine”).

Clause 280 specifies that offences that are prosecuted in a District Court are punishable on conviction to a maximum of 18 months imprisonment or up to $1M in fines for a natural person, and up to $10M in fines for a person other than a natural person. Clause 278(1), (2) and (3) offences that are determined to be continuing offences are also subject to an additional penalty of $10,000 per day the offence continues for a natural person, and $50,000 per day for a person other than a natural person.

Infringement offences are subject to a fee fixed through regulations. The maximum fee that can be prescribed for an infringement offence is $2000 for natural persons and $4000 for a person other than a natural person.

Pecuniary penalties may be imposed by the Environment Court, up to a maximum of $1M for natural person, and $10M for a body corporate. If a body corporate’s contravention occurred in the course to producing a commercial gain, the limit for pecuniary penalty is $10M, and either 3 times the value of the commercial gain, or 10% of the turnover of the body corporate (depending upon whether the commercial gain can be readily ascertained).

Clause 278278(4) creates offences for contravening or permitting a contravention of:

- a statutory requirement in the Act to provide certain information to an enforcement officer;
- statutory requirements in the Act relating to the protection of sensitive information;
- any order, other than an order specified in clause 278(1), made by the Environment Court

The offences in clause 278(4) carry a maximum penalty on conviction of $15,000, and if the offence is continuing, a further fine not exceeding $1500 per day.

These offences may also be prescribed as infringement offences through regulations. Infringement offences are subject to a fee fixed through regulations. The maximum fee that can be prescribed for an infringement offence is $2000 for natural persons and $4000 for a person other than a natural person.

Clause 278(5) creates offences for:

- wilfully obstructing, hindering, resisting or deceiving any person in the execution of any powers conferred under the Act;
- contravening or permitting the contravention of statutory requirements in the Act relating to non-attendance or refusal to co-operate with the Environment Court or any summons or order to give evidence issued or made with respect to provisions in the Act relating to hearings (including the application of provisions relating to Commissions of Inquiry);

The offences in 278(5) carry a maximum penalty on conviction of $5000

The Court may also sentence any person who commits an offence against the Act to a sentence of community work, and/or impose an enforcement order.

The Natural Environment Bill also includes provisions:

- allowing for regulations to be made specifying that existing offences specified in the Act may be prescribed as infringement offences (cl 307(1)(d));
- specifying infringement offences and infringement fees for the breach of regulations made under the Act (cl 307(1)(e).
- that creates a pecuniary penalty regime empowering the Environment Court to impose civil pecuniary penalties for any contravention of the Act (cl 297). A person may not be both convicted of an offence and ordered to pay a pecuniary penalty for the same conduct.

Most of the offence provisions in the Natural Environment Bill are carried over from the RMA, but there are new offences relating to the breach of monetary benefit orders, adverse publicity orders, enforceable undertakings and consent conditions.

Schedule 9, clause 69 of the Planning Bill creates offences for a person, without reasonable cause: (i) failing to appear in accordance with a summons issued by an Environment Court Judge, and Environment Commissioner, or the Registrar, or fail to produce anything that the summons requires them to produce; (ii) refusing to be sworn or to give evidence at proceedings before the Environment Court; and (iii) refusing to answer a question put by a member of the court during proceedings before the court. This schedule also applies to the Natural Environment Bill, so the offence also applies to summons issued in Natural Environment Bill proceedings. The offence is subject to a fine not exceeding $1500.

Schedule 10, clause 30 of the Planning Bill creates an offence for breaching an order preventing the publication or disclosure of evidence given before the Planning Tribunal, subject to a fine not exceeding $3000. This schedule also applies to the Natural Environment Bill, so the offence applies to Natural Environment Bill proceedings heard by the Planning Tribunal.

3.4.(b)

Clause 241 of the Bill applies Schedule 10 of the Planning Bill, which creates a new Planning Tribunal as a division of the Environment Court. The intent of the tribunal is to provide a faster and more cost-effective way of resolving certain, lower-level, disputes between system users and councils.

The functions of the tribunal will include reviewing administrative decisions made by local authorities in the processing of consents and permits under the Natural Environment Act and Planning Act. The tribunal will have streamlined processes to support the prompt resolution of matters. The tribunal will be able to confirm, modify, or quash the decision or aspect of decision being reviewed, or send matters back to the local authority for reconsideration.

The following parts of the Bill relate to the jurisdiction of a court or tribunal

Part 3 – Natural environment plans (Environment Court and Planning Tribunal)

Part 4 – Natural resource permits (Environment Court and Planning Tribunal)

Part 6 – Enforcement (Environment Court and District Court)

Schedule 3 – Coastal matters (Environment Court)

Schedule 4 – Water conservation orders (Environment Court)

3.4.1

The Ministry of Justice were consulted throughout the development of the provisions establishing a Planning Tribunal.

The Offences and Penalties Vetting (OPV) Team at Ministry of Justice were consulted by Ministry for the Environment during the development of the compliance and enforcement policies underpinning this Bill and the Planning Bill..

The OPV team were also consulted on the offence for breaching an order by the Planning Tribunal preventing publication or disclosure of evidence. The OPV team agreed with the approach of modelling the offence on section 20A of the Disputes Tribunal Act 1988 including the penalty, which is a $3,000 fine.

Ministry of Justice Comment:

The Ministry of Justice's Offence and Penalty (OPV) team acknowledges that offences and penalties in the environmental context often depart from ordinary principles of construction due to the wider public impacts of harm occurring to the natural environment, and that there may be compelling reasons (e.g. consistency with international frameworks) that could justify the specific offence and penalty proposals set out in the Natural Environment Bill.

However, despite the best efforts of the Ministry for the Environment (MfE), the OPV team has not had time to consider the Bill in final form to fully satisfy itself that such reasons exist or to ensure there are adequate safeguards.

We note that the Bill's offence and penalty provisions appear to be closely aligned with those in the Resource Management Act 1991 and the now-repealed Natural and Built Environment Act 2023. While this approach provides consistency across environmental statutes, in the OPV team's view some elements of the currently proposed and previous offence and penalty provisions appear to be inconsistent with the Legislation Design and Advisory Committee's Guidelines.

Examples of this approach departing from standard practice include:

- significant discretion for enforcement being provided to regulators and subsequently, the judiciary;
- strict liability offences that carry terms of imprisonment (although we note that there is case law demonstrating that the judiciary considers mens rea at sentencing, which partially mitigates the effects of a strict liability offence);
- defences for strict liability offences that are narrowly constructed; and
- continuing penalties existing in circumstances where the sanctioned conduct does not necessarily result in the harm to the environment (for example, continuing penalties for the strict liability offence of failure to give information).

The OPV team notes these points may be usefully further considered by the Select Committee while the Bill is before it.

The OPV team also notes that the nature of the Bill's proposed offences and penalties means the Bill should not be considered as a precedent or template for other agencies and Ministers considering changes to offences and penalties in other domestic legislation. Any consideration of such changes should occur on a case-by-case basis.

Privacy issues – question 3.5

The following provisions in the Bill relate to the collection, storage, access to, correction of, use or disclosure of personal information:

Clause 69, Matters to consider when making national instrument – minister must consider all submissions received

Clause 70, Process for making national instrument – iwi authorities must be notified, Minister may consult with any person who may have an interest in it, those notified must be given adequate time to make submissions on the proposal, and a report must be made by the chief executive to the Minister on these submissions

Clause 130, Applying for natural resource permit – a person applying for a natural resource permit must include the information required by Schedule 3, and ensure that the information provided is proportionate to the scale and significance of the matter to which the application relates

Clause 131, Activity classification to remain the same – use of information submitted for a natural resource permit.

Clause 133, Applications to undertake aquaculture activities – permit authority must forward a copy of the application to the chief executive ASAP, and provide the chief executive with a copy of the submissions on the activity

Clause 134, Application relating to area where group seeks customary marine title - person applying for a natural resource permit relating to an area where an applicant group seeks customary marine title must notify applicant groups, provide a list of the groups notified, and record their view

Clause 135, Permit authority may return incomplete application – permit authority may return the application to the applicant

Clause 137, Deferral pending application for additional permits – if a permit authority decides not to proceed with an application due to additional permits it must notify the applicants and must notify the applicant of its reasons for requesting further information.

Clause 139, Certain permits must be processed and decided no later than 1 year after lodgement – an extension of the time period must be granted by the permit authority if the extension is requested by the applicant

Clause 140, Request for further information – a permit authority may make a request for applicants of a natural resource permit to provide further information

Clause 141, Request for report – a permit authority may commission a person to prepare a report on a matter relating to information provided by an applicant for a natural resource permit and must, in writing, notify the applicant of its reasons for wanting to commission a report

Clause 142, Response to request for further information – responses to requests for further information from permit authorities

Clause 143, Consequences of applicant's failure to respond to requests, etc – permit authority may return the application to the applicant

Clause 144, Time limit for public notification or targeted notification - a permit authority must notify applicant if it decides to give public or targeted notification of an application for a natural resource permit

Clause 146 Notification requirements if section 145 does not apply – a permit authority must notify affected protected customary rights groups, affected customary marine title groups, persons to whom a statutory acknowledgement has been made, and must seek to identify and notify affected persons

Clause 147, Public notification of permit application after request for further information or report – public notification of natural resource permit application after request for further information

Clause 169, Particular conditions that may be included in natural resource permits – a natural resource permit may include a condition requiring the holder of the permit to supply to the permit authority information relating to the exercise of the natural resource permit

Clause 187, Notice of review – a notice of intent to review must specify the information with the permit authority took into account in making its decisions to review the permit

Clause 198, Special provisions relating to coastal permits for dumping and incineration – permit authority may require applicant to give further information, and permit holder must keep records of specified information and provide this information to the local authority each year

Clause 200, Certificate of compliance where activity does not require permit – consent authorities may require those seeking a certificate of compliance to provide further information

Clause 201, Existing use certificates – the permit authority may require those seeking an existing use certificate to provide further information

Clause 202, Notification and registration of activity subject to permitted activity rule – person proposing to carry out an activity in accordance with a permitted activity rule must notify relevant authority in writing and authority must register and monitor the activity

Clause 226, Provision of relevant information to post-settlement government entity – consent authority must provide the PSGE with relevant information relating to a permit application

Clause 227, Information gathering, monitoring, and keeping records – regional council must gather the information necessary to carry out its functions and responsibilities

Clause 228, Duty to keep records about iwi and hapū – regional councils to keep records about iwi and hapū and Crown must provide information to regional councils about iwi and hapū in their region

Clause 243, Duty to give certain information – enforcement officer may direct those who are breaching obligations under this Part to provide certain information, including directing a person B to give the officer person A’s full name, address, and date of birth

Clause 250, EPA may require information from local authority – the EPA may require information from local authority

Clause 268, Form and content of abatement notice – an abatement notice must be in the prescribed form and must state the name of the person to whom it is addressed, and the name and address of the NBE regulator whose enforcement officer issues the notice.

Clause 307, Regulations – the Governor-General may make regulations that may prescribe the content of applications, notices, or any other documentation or

information required under the Act; require the holders of water permits, discharge permits, or coastal permits to keep records and the form, manner, and times in or at which they shall be furnished; and require local authorities to provide information gathered under clauses 227 and 228 to the Minister and prescribe the content of the information to be provided

Clause 311, Conditions to be satisfied before regulations made under section 15.2 - the Minister responsible for aquaculture must consult on the proposed regulations through a formal process

Clause 328, Vesting of reclaimed land – every gazette notice published must state the name of the person in whom the right/title/interest is vested

Clause 337, Hearing to be held in public and orders protecting sensitive information – hearings must be in public; relevant authorities may make an order protecting sensitive information and order may exclude public from relevant part of hearing

Schedule Two (Information required in application for natural resource)

Clause 2, Information required in all applications – an application for a natural resource permit requires the full name and address of the applicant and of each owner or occupier of the site at which the activity is to occur

Clause 3, Additional information required in some applications – applicants must include information about permitted activities, assessment of the value of investment of existing permit holder, and certain matters related to a planning document prepared by a customary marine title groupClause 5, Information required in assessment of environmental effects - assessment of the activity's effects must include identification of the persons affected by the activity

Schedule Three (Coastal matters)

Clause 21, Requirements for offers of authorisations – a tender for an authorisation must be accompanied by any additional information specified in the notice calling for tenders

Clause 23, Acceptance of offer for authorisations – if an offer is accepted or an agreement reached, notice must be given to every person who made an offer of the person whose offer was successful

Clause 33, Regional council may request direction to process and hear together applications for permits for purpose of aquaculture activities – regional council may request direction to process and hear together applications for coastal permits, and these requests must be accompanied by information about why it would be best to do so

Clause 35, Direction to process and hear applications together – the Minister responsible for aquaculture may request any further information from a regional council that makes a request for the Minister to process and hear together applications for coastal permits in a common marine and coastal area space

Clause 40, Processing of affected applications – the regional council must advise each of the applicants of the names and contact details of the other affected applicants

Clause 45, Additional criteria for considering applications for permits for space already used for aquaculture activities – consent authority to consider all relevant information available in relation to the existing coastal permit

Clause 58, Requirements of tender – every tender for an authorisation must be accompanied by any additional information specified in the public notice call for tenders

Clause 59, Acceptance of tender, etc – if the Minister accepts a tender/rejects all tenders, the Minister must give notification of the decision, including the name of the successful tender, to the appropriate regional council and every tenderer

Clause 60, Notice of acceptance of tender – successful tenderer must be informed in writing

Clause 67, Concurrence of Director-General required for review to proceed – the Director-General of MPI may request the relevant consent authority and permit holders to provide information in writing when deciding whether a consent proposal is consistent with a review of conditions to coastal permits

Schedule Four (Water conservation orders)

Clause 4, How to apply for water conservation order – any person may, on payment of any prescribed fee, apply to the Minister to make a water conservation order for a water body

Clause 7, Public notification of application – the special tribunal may request further information from the applicant

Clause 8, Submissions to special tribunal – any person may make a submission to the special tribunal on a notified application in a form approved by the Minister and subject to requirements of the clause and special tribunal may, by notice in writing, require a submitter to supply further information relating to the submissionClause 9, Hearing by special tribunal – the Minister must provide the application and any other relevant information to the special tribunal without delay

Clause 10, Matters to be considered - special tribunal must regard to all submissions.

Schedule Five (Freshwater farm plans)

Clause 6, Main duties of farm operators - farm operator who is required to have a freshwater farm plan must arrange for the farm to be audited and in some circumstances submit the plan for certification

Clause 10, Functions of regional councils – regional council to monitor compliance by farm operators, receive notifications of certified freshwater farm plans, receive audit reports and related notifications from auditors, and; may require a farm operator to produce a freshwater farm plan for inspection, require information from an approved industry organisation, notify the Minister of concerns regarding the performance of an approved industry organisation

Clause 11, Records that must be kept by regional council – regional council must keep and maintain records related to freshwater farm plans

Clause 15, Regulations relating to freshwater farm plans – regulations may prescribe information required to be included in freshwater farm plans, information that farm operators must provide to auditors, require auditors, certifiers, and farm operators to supply prescribed information to regional councils, prescribe information that a regional council must keep.

Appendix Two: Further Information Relating to Part Four

Strict liability or reversal of the usual burden of proof for offences – question 4.4

Clause 278 carries over equivalent provisions from the RMA, and provides that it is not necessary to prove that the defendant intended to commit the offence in prosecutions and for civil pecuniary penalty proceedings for specific environmental offences:

- breaching statutory restrictions on land use
- unlawful use or activity in the coastal marine area
- unlawful use or activity in relation to beds of lakes and rivers
- breaching statutory restrictions relating to water
- unlawful discharge of contaminants
- breaching an enforcement order
- breaching a condition of a natural resource permit
- breaching an abatement notice
- breaching a monetary benefit order
- breaching an enforceable undertaking
- breaching an adverse publicity order
- breaching any requirement or duty made in emergency response regulations
- contravening a water shortage direction
- dumping a ship, aircraft or offshore installation (or any waste from them) in the coastal marine area
- incinerating waste in the coastal marine area
- storing radioactive waste or other radioactive matter or toxic/hazardous waste in the coastal marine area

Defences are available if the defendant proves that the action to which a prosecution relates was necessary to protect life, health or serious damage to property, or if it was due to an event beyond their control.

The imposition of strict liability to environmental offences aligns with the policy reasons identified by the Legislation Design Advisory Committee (see guideline 24.3 LDAC Legislation Guidelines: 2021 edition) in that these are offences:

- which involve the protection of the public from those who voluntarily undertake risk creating activities;
- for which there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches; or
- for which the defendant is best placed to establish absence of fault because of matters primarily within their knowledge.
- However, the regime does depart from standard legislative practice, because strict liability offences would not typically be subject to a term of imprisonment, and the statutory defences are quite narrow.

Significant decision-making powers - question 4.6

Natural environment permits

Part 4 of the Bill contains provisions that provide for decision-making by permitting authorities in respect of applications for natural resource permits. These qualify as significant decision-making powers because natural resource permits may permit activities that would otherwise be unlawful, and can set conditions applying to these activities.

Part 4 sets out a number of relevant procedural requirements in respect of applications for natural resource permits. This includes notification of affected parties (cl 146), a right for applicants and affected persons to make submissions (cl 152) and request hearings (cl 153(b)), mediation provisions (cl 153(a)), provisions covering matters the permitting authority must and must not have regard to in considering and deciding an application (Part 4 Subpart 4), provisions governing the setting of conditions when granting permits including provision for applicants to request draft conditions (cl 168 – 170), and a requirement for decisions to be notified (cl 171).

Applicants and submitters may appeal, to the Environment Court in the first instance, the whole or ay part of a decision of a permit authority on a natural resource permit application or an application for a change to permit conditions or a review of permit conditions (cl 172). Certain administrative decisions made by a permitting authority in the course of administering the permitting process may be subject to review by the Planning Tribunal on application by an eligible person (see Planning Bill, Sch 10, cl 14, 15, 16, 19).

Regulatory relief

Clause 111 of the Bill applies Part 4 of Schedule 3 of the Planning Bill, which contains provisions that provide for decision-making by local authorities in respect of the granting of relief when a plan or private plan change has a significant impact on the reasonable use of land. This qualifies as a significant decision-making power because it concerns significant impacts on a person's reasonable use of land they own and access to relief for such an impact, which may include monetary payment or the offering of alternative parcels of land in exchange for the affected site (see cl 70(2) of Schedule 3 of the Planning Bill).

Part 4 of Schedule 3 of the Planning Bill contains relevant procedural requirements related to the exercise of this decision-making power. This includes requirements for councils when assessing the materiality of the impact a relevant rule may have (cl 66), a duty to prepare a relief framework that, among other matters, sets out how relief will be made available (cl 65, 67), and a requirement to notify affected persons of the results of a relief assessment, including requirements for what the notice must include (cl 71). The relief framework must be included in a proposed plan when it is notified for public submissions (cl 65)

A local authority's exercise of its power to provide regulatory relief would be subject to review by the Planning Tribunal in the first instance (see Planning Bill Sch 10 cl 23).

Powers to make delegated legislation - question 4.7

Clause 74 (Approval of national instrument) contains an empowering provision for the Governor-General, in Council, to approve a national instrument on the recommendation of the Minister. National instruments are secondary legislation (cl 74(6)) and include national policy direction (NPD) (cl 3). The purpose of NPD is to 'particularise' the Act's goals and direct how they must be achieved, and to help address conflicts between the goals of the Natural Environment Act and the Planning Act (cl 78, 80). NPD may restrict how goals are achieved (cl 80). Clause 12 sets out the relationship between the goals and NPD and specifies that a person exercising a power or performing a function under the Act must not consider the Act's goals directly except for the circumstances listed in cl 12(3)(c), and if a provision of the Act expressly allows or requires a person to consider the goals, the person must only consider the goals as they have been addressed or particularised in "higher order instruments" (which includes NPD). NPD may apply to all of New Zealand or to any specified district, region, or part of New Zealand (cl 68(2)).

The power to make NPD does not involve a power to amend the Act. However, it is a significant delegation of legislative power. It is expected to have legislative effect in determining how the goals in the Bill are implemented, and how potential conflicts between the goals of the Act and of another Act, the Planning Act, are addressed.

While the term ‘particularise’ does not appear in the RMA, it should be noted that the intended relationship between the Bills and NPD made under them is broadly consistent with (and intended to codify) existing practice and jurisprudence under that Act. For example, the Supreme Court has described the relationship between the RMA and instruments made under it in the following way (EDS v NZ King Salmon, at [30]):

> the RMA envisages the formulation and promulgation of a cascade of planning documents, each intended, ultimately, to give effect to s 5, and to pt 2 more generally. These documents form an integral part of the legislative framework of the RMA and give substance to its purpose by identifying objectives, policies, methods and rules with increasing particularity both as to substantive content and locality.

Clauses 307 - 309 contain provisions relating to regulation making powers.

Clause 307 (Regulations) contains a general regulation making power providing for anything this Act (or the provisions of the Planning Act that are applied to this Act) says may or must be provided for by regulations (cl 307(1)(a)).

This reflects that throughout the bill there are references to requirements for certain things to be done in the “prescribed form”. Under clause 3, “prescribed form” means a form prescribed by regulations made under this Act. The relevant regulation-making powers therefore enable a term to be defined.

Clauses 307 – 309 include other powers to define terms—for example, at clause 307(1)(q), a power to define the meaning of “toxic or hazardous waste” under clause 24(3), and, at clause 307(1)(z), a power to define the meaning of “long-lived infrastructure” under clause 3.

Clause 307 contains an empowering provision at 307(1)(l) to make regulations for transitional and savings purposes that can amend Schedule 1 of the Act.

Schedule 5 clause 3 (Application of this Part / Schedule) contains empowering provisions at 3(2) and 3(3) to make secondary legislation by Order in Council that may, respectively, determine the geographic application of Schedule 5 of the Act and the commencement date for such application, and may disapply a statutory land use area threshold and, optionally, prescribe a higher land use area threshold in its place.

Schedule 5 clause 4 (When this Part / Schedule ceases to apply) contains an empowering provision to, by Order in Council, amend secondary legislation made under Schedule 5 clause 3, to cease the geographic application of Schedule 5 of the Act and the date from which the application of Schedule 5 ceases.