

DISCUSSION ONLY – NOT GOVERNMENT POLICY

SUPPLEMENTARY PAPER – RMA TECHNICAL ADVISORY GROUP

Friday, 19 December 2008

<b>Subject:</b>	<b>Definition of Working Day</b>
<b>Options Checklist No.</b>	<b>Streamlining Consent Processes: Option 14</b>
<b>Purpose:</b>	For provide a brief history of the term “working day” as defined in the RMA and a comparison with the definition of working day defined in other legislation.
<b>Summary:</b>	<ol style="list-style-type: none"><li>1. Shortening the Christmas break period in the definition of working day was last considered in 2003. Five days were removed from the Christmas break period in the definition but there was an unwillingness to shorten it further as (amongst other matters) it would detract from the ability of the public to participate in RMA processes.</li><li>2. Even though the Interpretations Act 1999 contains a definition of ‘working day’ many statutes (including those drafted since 1999) continue to have their own definition of working day.</li></ol>
<b>Recommendation:</b>	That the definition of working day in the RMA remains unchanged.

**Background:**

1. The definition of “ working day” in the RMA originally said that a working day was any day *except*:
  - a. Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, Labour Day, the Sovereign’s Birthday, and Waitangi Day; and
  - b. A day in the period commencing with the 20<sup>th</sup> Day of December in any year and ending with the 15 January in the following year.
2. The definition of working day was changed by the Resource Management Amendment Act 2003 by shortening the period over the Christmas break so that it only covered the period between 20<sup>th</sup> of December to 10<sup>th</sup> January. This was a compromise from the original amendment proposal (1999) which had sought to shorten the period to between 25<sup>th</sup> December and 10<sup>th</sup> January.
3. In 1999 it was considered the Christmas break period was “unduly long”. However the proposal to shorten it was watered down in the 2003 Amendment Act. The reasons stated at the time were:
  - a. It was already difficult to obtain legal and planning advice over the Christmas period and many planners and lawyers take leave at this time;
  - b. It was impractical for the public and voluntary organisations to make submissions or responses over the reduced timescale as they had few resources to cover for those on leave and may also have to rely on assistance that may also not be available – this would reduce public participation;
  - c. It would deprive submitters and local authorities time in which they would normally carry out research or forward planning.

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### Examples of other statutory definitions of working day:

4. An analysis of the definition of 'working day' in 10 statutes other than the Resource Management Act found that there was great variability in the definition of working day. The RMA definition was unique amongst those definitions studied, while only the Local Government Act 2002 used the exact definition contained in the Interpretation Act.
5. Until 2005, the RMA, Hazardous Substances and New Organisms Act and Forests Act all shared a common definition.

Legislation	Weekends Good Friday, Easter Monday, Anzac Day, Waitangi Day, Sovereign's Birthday Excluded?	Excludes provincial anniversary holidays?	Period excluded as Christmas break
<b>Resource Management Act 1991 (from 2005)</b>	<b>Yes</b>	-	<b>20 Dec – 10 Jan</b>
Building Act 2004	Yes	Yes	20 Dec – 10 Jan
Hazardous Substances and New Organisms Act 1996	Yes	-	20 Dec – 15 Jan
Biosecurity Act 1993	Yes	Yes	20 Dec – 15 Jan
Forests Act 1949	Yes	-	20 Dec – 15 Jan
<b>Interpretation Act 1999</b>	<b>Yes</b>	-	<b>25 Dec – 2 Jan<sup>1</sup></b>
Local Government Act 2002	Yes	-	25 Dec – 2 Jan <sup>2</sup>
Property Law Act 2007	Yes	Yes	25 Dec – 2 Jan <sup>3</sup>
Local Government Official Information and Meetings Act 1987	Yes	-	25 Dec – 15 Jan
Public Works Act 1981	Yes	-	25 Dec – 15 Jan
Conservation Act 1987	Yes	-	25 Dec – 15 Jan

<sup>1</sup> But if 1 January falls on a Friday, the following Monday is excluded; or if 1 January falls on a Saturday or Sunday, the following Monday and Tuesday are excluded

<sup>2</sup> Same as for Interpretation Act 1999

<sup>3</sup> Same as for Interpretation Act 1999

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### **Conclusions:**

6. The argument that changing the definition of working day brings the RMA more into line with other legislation has some merit. However changing the definition of working day to that used in the Interpretation Act 1999 would only see a reduction of around 5 working days over which a consent processing clock is stopped. This reduction occurs over a period where there is relatively little activity occurring due to applicants, submitters, council officers, elected representatives and experts who may otherwise take part in RMA processes taking leave.
7. It is also noted, that to achieve absolute consistency in the use of the term 'working day' many statutes, along with the RMA, would need to be amended.