

Supplementary Departmental Disclosure Statement

Resource Management Amendment Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Resource Management Amendment Bill, dated 18 September 2019, can be found at this link

<http://disclosure.legislation.govt.nz/bill/government/2019/180/>

This supplementary disclosure statement was prepared by the Ministry for the Environment and the Ministry for Primary Industries.

The Ministry for the Environment and the Ministry for Primary Industries certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

7 May 2020

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The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Resource Management Amendment Bill.

A supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement will note these if relevant but will not explain them further.

The main areas of change to the original disclosure statement include:

- Incorporation of a new Part 6AAA of the Resource Management Act 1991, that creates a regime for mandatory and enforceable freshwater farm plans for all farms which meet the threshold identified, and empowers the Minister for the Environment to recommend regulations to support the development of the regime.

Part One: General Policy Statement

Reforms to improve freshwater quality are a key priority for the government. It has agreed to the following objectives:

- stop further degradation of New Zealand's freshwater resources and start making immediate improvements so that water quality is materially improving within five years;
- reverse past damage to bring New Zealand's freshwater resources, waterways and ecosystems to a healthy state within a generation, and

Reducing diffuse contaminant loss from farming systems (sediment, nutrients, biological contaminants) is a complex issue, which has not been achieved at a sufficient rate to date, and is difficult to achieve through regulatory systems. Unlike a point source discharge, it is difficult to tie a particular level of environmental harm to a specific activity on land. This is made even more difficult by the variation in land use, land type and the different potential decisions made by land users in these variable situations.

Improvements using the existing regulatory system provides for part of the solution to diffuse contaminant loss. Part of the wider Action for healthy waterways policy package proposes to tackle these problems through a new National Policy Statement and National Environment Standards and regulations under the Resource Management Act 1991. Nevertheless, not all of the problems can be tackled in the same, uniform way enabled by the existing regulatory system.

Freshwater farm plans (FW-FPs) are an approach to resource management where farmers and growers develop tailored, risk-based FW-FPs that identify the actions that they will take to support the improvement of water quality and ecosystem health. Placing farmers and growers at the centre of this process, with support from professional advisers, encourages on-farm identification of environmental risks, farmer-ownership of those risks and the ongoing commitment to continuous improvement.

This SOP will empower the Minister for the Environment, in consultation with the Minister of Agriculture, to recommend regulations that make the development of a FW-FP mandatory for all farms above the identified size thresholds, as well as making the specific on-farm activities identified in the FW-FP enforceable under the Resource Management Act 1991 (RMA). Many farmers and growers are already implementing good farm practices and achieving improved environmental outcomes. Making FW-FPs mandatory and enforceable will require all farmers and growers over the size thresholds identified to achieve the same standards of environmental performance, while enabling local authorities to tackle the laggards.

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>Government has publicly consulted on its proposals for freshwater, including proposals about possibly making FW-FPs mandatory for all farms above a size threshold. This was contained in a discussion document entitled “Action for healthy waterways: Our proposals, your views”. This document, along with information about the advisory groups the government also established, is available at:</p> <p>https://www.mfe.govt.nz/consultation/action-for-healthy-waterways</p> <p>When available, the summary of submissions and the report of the Independent Advisory Panel established to consider those submissions, will be available at the same link above.</p> <p>The following reports have also been used to inform policy development on farm planning and the application of good farming practices:</p> <ul style="list-style-type: none"> • Doole, G. J. (2015). Description of mitigation options defined within the economic model for Healthy Rivers Wai Ora Project: description of options and sensitivity analysis; https://www.waikatoregion.govt.nz/services/publications/tr201847/ • Snelder, T (2018). Assessment of recent reductions in E.coli and sediment in rivers of the Manawatu-Whanganui Region: Including associations between water quality trends and management interventions https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/Horizons%20Ecoli%20Sediment%20Trends_Final.pdf • Parminter, T., 2015: Selecting farm practices and preparing farm plans for land-use consents in the Manawatu- Wanganui region. In "Proceedings of the 77th Annual Grassland Conference"). https://www.grassland.org.nz/publications/nzgrassland_publication_2749.pdf 	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The regulatory changes that are enabled by this Supplementary Order Paper were covered within regulatory impact statements that considered the government's approach to improving water quality:</p> <p>Ministry for the Environment (2020) Regulatory Impact Analysis – Action for healthy waterways.</p> <p>This document will be released on the website of the Ministry for the Environment.</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?	YES
<p>"The review panel considers that the Regulatory Impact Assessment (RIA) partially meets the Quality Assurance criteria. This RIA has satisfactorily provided all required analysis to form a robust conclusion about the preferred option. However:</p> <ul style="list-style-type: none"> • It does not contain any information about monitoring and evaluation of the operation of the proposal, with respect to uptake of farm plans and the extent to which these contribute to better farm practices and environmental outcomes. • The most critical element of successful implementation will be development of a sufficiently large and skilled cohort of farm advisers to prepare and verify farm plans. However the implementation planning is very high level with timelines that are imprecise and contingent on future decisions; and the panel does not consider this planning is sufficiently well developed to provide confidence that implementation will be successful." 	

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?	NO

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?	YES
This assessment is included in the RIA identified above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected 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
This assessment is included in the RIA identified above.	

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 do not consider that the policy behind this SOP materially impacts on New Zealand's 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?

Te Kahui Wai Māori is a Ministerial advisory group which was established to enable collaborative development and analysis of freshwater policy options for issues of particular relevance to Māori. Te Kahui Wai Māori is helping the government to navigate through the challenging issues that need to be addressed to improve water quality.

The policy of mandatory and enforceable FW-FPs was discussed with Te Kahui Wai Māori. Members expressed a range of perspectives, but the majority supported the proposal for mandatory and enforceable FW-FPs.

Ministry for the Environment officials have not identified any proposed changes that are inconsistent with resource management arrangements or rights established by specific Treaty settlement legislation.

We propose to engage closely with tangata whenua during the regulation-making process that will follow the enactment of this SOP.

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?

NO

No advice has been provided to the Attorney-General on this Supplementary Order Paper. Advice provided on the original Bill can be accessed on the Ministry of Justice's website at: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

We do not consider that the policy behind this SOP limits any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>Clause 8 of this Supplementary Order Paper requires that a regional council must enforce the observance of the requirements of the proposed new Part 6AAA and the regulations to the extent to which their powers under the Resource Management Act enables them to do so.</p> <p>This means that regional councils will be required to use the existing provisions in the Resource Management Act to enforce the requirement for all farms above the size threshold to have a certified freshwater farm plan.</p> <p>The Supplementary Order Paper enables the making of regulations that, when made, will create new infringement offences. Otherwise, the regime will be enforced using existing powers under the Resource Management Act and any prosecutions will be taken under existing offences.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice undertook an offences and penalties vet of the policy proposal and have expressed comfort with the intended approach. Ministry for the Environment will continue to engage with officials at the Ministry of Justice in the development of regulations made to support the implementation of this proposed new Part.</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
<p>Clause 6 requires a certifier to notify the relevant regional council that a FW-FP has been certified.</p> <p>Clause 7 requires an auditor to provide the relevant regional council with a final copy of the audit report if a farmer is found not to have achieved compliance with their certified FW-FP.</p> <p>Clause 8 gives regional councils the function of receiving these notifications.</p> <p>Clause 8A requires regional councils to maintain a record of farms that have a certified FW-FP, the date of certification, the date of last audit and any other information required by regulations enabled under Clause 11.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>Information provided to regional councils is required for them to undertake their compliance, monitoring and enforcement functions. It will not be listed publicly, will not be shared further, and the Privacy Principles will apply to the storage and usage of the information. Regional councils are already operating within this environment.</p>	

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>Government has publicly consulted on its proposals for freshwater, including proposals about possibly making FW-FPs mandatory for all farms above a size threshold. This was contained in a discussion document entitled “Action for healthy waterways: Our proposals, your views”. This document, along with information about the advisory groups the government also established, is available at:</p> <p>https://www.mfe.govt.nz/consultation/action-for-healthy-waterways</p> <p>When available, the summary of submissions and the report of the Independent Advisory Panel established to consider those submissions, will be available at the same link above.</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
<p>The Ministry for the Environment has engaged with members of the advisory groups established to support the development of the Action for healthy waterways policy package, including:</p> <ul style="list-style-type: none">• Te Kahui Wai Māori• Freshwater Leaders Group• Science and Technical Advisory Group• Essential Freshwater Regional Sector Water Group <p>Information about each group and its membership is available on the Ministry’s website at:</p> <p>https://www.mfe.govt.nz/consultation/action-for-healthy-waterways</p> <p>We have also engaged with planners in regional councils (notably Environment Canterbury) to support the rigour and workability of the proposed amendments.</p>	

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

Retrospective effect

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

Strict liability or reversal of the 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?	NO

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
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Certifiers of FW-FPs could be considered to have significant decision-making powers about a person's property rights. Certifiers will ultimately make decisions that affect the level of investment that farmers must make or the on-farm behaviours they must undertake to comply with their certified FW-FP. These decisions could range from significant capital investment through to day-to-day behaviour on farms, such as when to apply fertiliser, or how and where animals will be allowed to graze.

The regulation-making process will contain a number of safeguards that will apply to ensure that this decision-making power is used appropriately:

- The Regulation making provisions enable the development of criteria that will apply to the appointment of certifiers and auditors. These provisions will be developed and consulted on with industry, regional councils, iwi and environmental organisations. This will ensure that only appropriately skilled and experienced persons can be appointed as certifiers and auditors. Auditors and certifiers will have to be approved through a farm planning certification scheme.
- Certifiers and auditors will need to show sufficient knowledge of regional or catchment-specific requirements to be able to work in that location.
- Certifiers and auditors will have to maintain their certified status to be able to certify or audit an FW-FP
- Certifiers and auditors must be independent from the farmer / grower, and auditors must not have been involved in the development of the FW-FP as a certifier.
- Clause 7(5) of the SOP provides that where an auditor finds that a farm has not achieved compliance, the auditor must specify why, timeframes by which compliance must occur and may include recommendations on how to achieve compliance.

The regulation-making process will be strongly supported by the development of guidance for farmers, certifiers, auditors and regional councils.

Powers to make delegated legislation

<p>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?</p>	<p>NO</p>
<p>Clause 2A empowers the Minister for the Environment to apply the FW-FP to specified regions or parts of New Zealand, through an Order in Council. The purpose of this clause is not to create an exemption, per se, but to enable the phased implementation of the FW-FP regime.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Supplementary Order Paper provides for regulations relating to FW-FPs to be made by the Governor-General by Order in Council, made on the recommendation of the Minister for the Environment, after consulting the Minister of Agriculture.</p> <p>The regulations will provide for the details necessary to support the implementation of the FW-FP regime. The regulations will be able to prescribe:</p> <ul style="list-style-type: none"> • crops covered by FW-FP requirements, • land uses for inclusion, • the content of FW-FPs, • the certification regime, including timeframes to be complied with and fees to be paid, • the auditing regime to assess compliance, • the criteria for the appointment of certifiers and auditors, • information that must be reported to regional councils, and • information that must be kept by regional councils. <p>Regulations will also be able to be applied generally or to specified districts, regions or parts of New Zealand.</p>	

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