

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.

11 June 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:

- A change to the date by which councils must notify regional policy statements and plans which implement the National Policy Statement for Freshwater, or otherwise relate to freshwater, from 31 December 2023 to 31 December 2024.
- Creating a regulation making power that would allow the Minister for the Environment to make regulations that require fertiliser companies to report on the sales of fertiliser, including where or to whom the fertiliser is sold to.
- Making permanent Resource Management Act 1991 (RMA) changes enacted by the COVID-19 (Further Management Measures) Legislation Act 2020 (CRLA) relating to the use of remote access facilities in RMA hearings and allowing certain documents to be made available for inspection electronically.

Extending the commencement date of the climate change provisions to enable extension by Order in Council. This would provide the option to extend, closer to the end of 2021, if the nominal date in the Bill (31 December 2021) is not sufficient time to promulgate climate change national direction. Part One: General Policy Statement

Freshwater planning

The Government is committed to improving New Zealand's freshwater quality by stopping further degradation and loss, and reversing past damage. The programme for doing so is outlined in *Essential Freshwater: Healthy Water, Fairly Allocated* (Essential Freshwater) published in October 2018.

Key to achieving the Government's freshwater goals will be a new National Policy Statement for Freshwater Management made under the RMA. This is on track to come into force in mid-2020.

Recent reporting from councils to the Ministry for the Environment (MfE) has shown that the majority of councils are unlikely to meet the primary deadline of fully implementing the 2017 NPS-FM by 2025, and are going to take until 2030 or later (the deadline can currently be extended to 2030 in certain circumstances). The government considers this timeframe to be unacceptable. The reasons for delay are varied but include the slow standard RMA plan-making processes.

The Government therefore introduced a new planning process that regional councils must use for their policy statements and plans that implement the NPS-FM or otherwise relate to freshwater. The Bill currently requires these planning instruments to be publicly notified no later than 31 December 2023.

During consultation there was extensive feedback on the challenges meeting this timeframe would pose to councils and their communities, including iwi. Submitters considered that there would be insufficient time to fully engage on freshwater matters and develop quality plan content.

The Government's priority remains to ensure plans are in place in a timely manner and an implementation program has been developed to provide unprecedented levels of support to councils and communities to develop plan content. However, COVID-19 has increased the burden on councils and their communities such that the Government now considers an additional 12 months to develop planning content is warranted.

This SOP will extend the date by which councils must notify their regional policy statements and plans which implement the NPS-FM or otherwise relate to freshwater from 31 December 2023 to 31 December 2024.

Fertiliser reporting

The Government has introduced a range of measures to reduce the level of nitrogen leaching into water ways, including restrictions on the amount of synthetic nitrogen fertiliser applied to pastoral farms. To make sure the government's measures are

implemented in a way that delivers real results the government will provide monitoring and annual reporting on the use of nitrogen fertiliser across New Zealand.

Requiring fertiliser company reporting will provide this information at a level sufficient to identify whether the policy is achieving results, without imposing significant administrative and compliance costs that would come from individual reporting.

Climate Change Amendments in the Bill

The Resource Management Act 1991 (RMA) does not currently provide for climate change mitigation to be considered in plan-making or consenting. In light of submissions on the Bill, and the recent enactment of the Climate Change Response (Zero Carbon) Amendment Act 2019, Cabinet agreed to a package of amendments to enable RMA decision-makers to consider climate change mitigation [CAB-20-MIN-0051.01 refers]. These changes were added to the Bill by the Environment Select Committee, which presented its report on 30 March 2020.

Amendments affecting local authority decision-making are currently proposed to commence on 31 December 2021. This date aligns with the statutory deadline for publication of the first emissions reduction plan under the Climate Change Response Act 2002 (CCRA)¹.

National direction will be needed to support local authorities in considering climate change mitigation by the time these changes commence. Cabinet agreed to deliver national direction by 31 December 2021. However, in light of Government resources needing to be focused on the COVID-19 response, this deadline may be difficult to achieve.

To address this, the Bill provisions are amended to enable the commencement date for these amendments to be extended by Order in Council if necessary, to a date no later than 30 November 2022. The current commencement date of 31 December 2021 would be retained in the primary legislation as the nominal date if national direction is able to be issued by then.

Making permanent the use of remote access facilities in RMA hearings and allowing certain documents to be made available for inspection electronically

The CRLA made two temporary amendments, which are due to expire on 31 October 2021. These amendments are to

- clarify the use of remote access facilities (including audio-visual links) in RMA hearings
- allow certain documents to be made available for inspection electronically.

¹ As an interim backstop, amendments to enable decision-makers on matters of national significance 'called in' by the relevant Minister to consider climate change mitigation are proposed to commence immediately.

These sections were unable to be made permanent through that Omnibus Bill, however these changes warrant being made permanent given technological advancement is likely to make these practices normal. The SOP makes these changes permanent.

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>Freshwater planning process: The Environment Select Committee report can be found here: https://www.parliament.nz/resource/en-NZ/SCR_96439/40a17936019812cd667f8dc16ee1e2b915ef4fea</p> <p>The Ministry for the Environment initial briefing and other information provided to the Committee can be found here: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_91358/tab/submissionsandadvice</p> <p>The Government also publicly consulted on other regulatory proposals for freshwater, These are 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: https://www.mfe.govt.nz/consultation/action-for-healthy-waterways</p> <p>The summary of submissions and the report of the Independent Advisory Panel established to consider those submissions, will be available at the link below. https://www.mfe.govt.nz/action-for-healthy-waterways</p> <p>Making two CRLA amendments permanent: The Epidemic Response Committee report for the temporary changes to the RMA can be found here: https://www.parliament.nz/en/pb/sc/reports/document/SCR_97736/covid-19-response-further-management-measures-legislation</p>	

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>Freshwater planning process Ministry for the Environment (2020) Regulatory Impact Analysis – A new planning process for freshwater https://www.mfe.govt.nz/sites/default/files/media/Legislation/RIS/impact-statement-a-new-planning-process-for-freshwater-updated.pdf</p> <p>The Regulatory Impact Analysis (RIA) for the Action for Healthy Waterways package is available at the link below, an addendum to the RIA covering fertiliser company reporting will be made available at this link shortly. https://www.mfe.govt.nz/action-for-healthy-waterways</p> <p>Making two CLRA amendments permanent: The Regulatory Impact Summary for making permanent recent RMA changes to allow documents to be made accessible electronically, and hearings to use remote access facilities will be available at: https://www.mfe.govt.nz/rma/improving-our-resource-management-system</p> <p>Amending the climate change commencement dates: The original RIS for this policy titled 'Linking the Zero Carbon Act 2019 with the Resource Management Act 1991' will be made available shortly at:https://www.mfe.govt.nz/rma/improving-our-resource-management-system</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES

Freshwater planning process The Regulatory Impact Analysis Team in the Treasury advised that its analysis role for this RISs could be completed by MfE's Regulatory Impact Analysis Panel (the Panel).

The Panel considered that it partially meets the quality assessment criteria:

- The RIS is clearly presented and is concise in explaining the problem associated with the plan-making process, and in setting out options to improve the system. The analysis of the options is sound, but falls short of fulfilling all of the RIS criteria due to the lack of consultation with some affected groups as discussed below.
- There is a recognised need for urgent action for the implementation of the NPS-FM. In considering options for improving the process for plan-making, consultation has been undertaken with central government agencies and local government, including regional councils. Government advisory groups on freshwater reform, such as KWM, were engaged with on the proposal. KWM includes members with experience in the primary sector and agribusiness, freshwater science and mātauranga Māori, local government, resource management law and policy, and whānau and hapū advocacy. However, there has not been formal consultation ahead of Cabinet decisions with tangata whenua (iwi and hapū themselves), primary producers, key environmental NGOs or RMA practitioners in general.
- A similar hearings based process was instituted for the Auckland Unitary Plan and the streamlined planning process, however it is not a default setting and proposals could have been consulted on. Given the significance of water, especially to tangata whenua and primary users, this limited consultation is considered to be significant. While there is an opportunity for these groups to engage through the select committee process for the Bill, this is not on its own considered sufficient to cover the approach to consultation prior to Cabinet decisions.
- However, we note that two significant consultation processes are proposed to address the lack of consultation. From early July through to mid-August there is targeted consultation planned on the comprehensive review of the RMA, which will include discussion of the freshwater planning process. In addition, the Essential Freshwater programme will run from August to October and include wide ranging public consultation, as well as targeted hui with iwi/hapū and primary sector groups and will include a detailed description of these specific proposals. The feedback from these consultations will be collated by MfE and passed on to the Select Committee.

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

Fertiliser company reporting The Regulatory Impact Analysis Team in the Treasury advised that its analysis role for this RISs could be completed by MfE's Regulatory Impact Analysis Panel (the Panel). The Panel has reviewed the RIS and considers it partially meets.

Making two CLRA amendments permanent: The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) document "Making permanent recent RMA changes to allow documents to be made accessible electronically, and hearings to use remote access facilities". The Panel considers the document partially meets the quality assurance criteria for regulatory impact analysis. The RIS is clear and concise and makes a convincing case for the changes proposed. While the analysis has been informed by some consultation on the COVID-19 response legislation, consultation on these specific changes through the Bill has not been carried out. While the known impacts are adequately articulated, the lack of a proper consultation process raises a risk that there are impacts on stakeholders that have not been able to be identified.

Amending the climate change commencement dates: For the original Cabinet decision, the Regulatory Impact Analysis Team in the Treasury advised that its analysis role for this

RISs could be completed by MfE's Regulatory Impact Analysis Panel (the Panel). "the RIS clearly explains the rationale for the proposed amendments to the RMA, which repeal amendments made to the Act in 2004, on the basis of a changed policy framework in favour of a comprehensive set of domestic policies that complement emissions pricing through the Emissions Trading Scheme (ETS). There are risks to proceeding with this change to primary legislation without formal consultation that cannot be adequately mitigated by means of future consultation on a supporting National Environmental Standard. Stakeholder consultation and engagement would have significantly strengthened the options analysis and economic assessment and given greater confidence about the benefits of the proposal. The further policy measures will need to be subject to consultation for a full perspective, careful analysis and subsequent evaluation of their impacts in practice."

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
The costs and benefits of fertiliser company reporting will be dependent on the level of compliance, and the level of regulator effort put into encouraging or securing compliance. If companies do not comply, they will not incur any costs, nor will there be any benefits of identifying trends, nor identifying farmer compliance with the synthetic nitrogen fertiliser cap.	

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?

Freshwater planning process Fertiliser Company Reporting, climate change amendments commencement dates: 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?

Freshwater planning process: A review was undertaken of existing Treaty legislation provisions, this review showed that existing Treaty settlement arrangements, and other arrangements between Māori and the Crown or councils, can be applied to the freshwater planning process on a case-by-case basis.

The intent is for Treaty settlement arrangements to continue to be accommodated in the same way as they would currently under a standard RM planning process. This includes at all stages of plan making, eg developing plan content before notification, the composition of the hearing panel and who makes final decisions on plan content.

As a result of submissions, changes have been included to clarify this intent. For example, as per the report from the Select Committee, a new clause clarifies that councils must make final decisions, following recommendations from the freshwater hearing panel, in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe or joint management agreement.

Fertiliser company reporting No steps have been taken, however, it is not considered that this policy is inconsistent with the principles of the Treaty of Waitangi.

Climate change amendment commencement dates: No steps have been taken, however it is not considered that this policy is inconsistent with the principles of the Treaty of Waitangi.

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/>

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

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>Freshwater planning process: Discussion was held with Ministry of Justice staff on the provision of Environment Court commissioners as potential appointments as freshwater commissioners and Judges as a potential appointment to the role of Chief Freshwater Commissioner.</p> <p>Fertiliser company reporting: the Ministry of Justice was consulted</p> <p>Making two CRLA amendments permanent: the Ministry of Justice was consulted</p> <p>Climate change amendments commencement dates: the Ministry of Justice was consulted.</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>Fertiliser company reporting: This section could enable the Minister for the Environment to create regulations which could require the collection, storage, access to, correction of, use or disclosure of personal information.</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>Freshwater planning process: The proposed freshwater planning process was tested with advisory groups under the Essential Freshwater programme (including Kāhui Wai Māori) and discussed with the Freshwater Iwi Leaders Group.</p> <p>Government has publicly consulted on its proposals for freshwater, including proposals about the new planning process for freshwater. 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: 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>Fertiliser company reporting: The Action for healthy waterways public consultation included proposals to address excessive synthetic nitrogen use. Stakeholder thoughts on the broader policy, provided through public consultation, are summarised in Chapter 15 of Action for healthy waterways part 2: Detailed analysis available here: https://www.mfe.govt.nz/action-for-healthy-waterways</p> <p>Stakeholders have not been consulted on options for collecting and reporting nitrogen use or sales. However, this change is to help implement proposals to reduce excessive nitrogen leaching.</p> <p>Making two CRLA amendments permanent: Two submissions were received by the Epidemic Response Committee on the temporary amendments to the RMA made through the CRLA. Both of these were in support, with one suggesting they be made permanent. There has not been external consultation on making these amendments permanent.</p> <p>Amending the climate change amendments commencement dates: the climate change provisions in the Bill were introduced in response to submissions that arose through the statutory consultation process.</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: 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> <p>Fertiliser company reporting There has been no engagement outside government agencies, officials intend to do further engagement prior to the making of regulations</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?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Fertiliser company reporting creates the power for the Minister for the Environment to create regulations that would require fertiliser companies to report fertiliser sales.	

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
<i>[If YES, identify the relevant provision(s). Then describe its nature and purpose, and explain why the provision is necessary.]</i> http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/26.htm	

