



## RESOURCE MANAGEMENT AMENDMENT ACT 2009

# Fact Sheet 6: Changes to National Instruments

This is one of a series of fact sheets giving an overview of the amendments to improve the Resource Management Act (RMA). This fact sheet outlines the changes to national policy statements (NPS) and national environmental standards (NES).

### WHAT WERE THE ISSUES?

The amendments to the RMA address concerns about:

- the speed at which councils can give effect to NPS and NES
- significant costs faced by councils to make plan changes to implement new NPS and NES
- a lack of consistency between NES and other sections of the RMA leading to uncertainty about what standards could and could not achieve
- unclear responsibility for councils and other authorities to implement and enforce NES
- unclear and potential conflict between the provisions of existing and future NPS.

### HOW HAS THE RMA BEEN IMPROVED?

#### National environmental standard development and amendment processes

Section 44 sets out the process that must be followed by the Minister before recommending the making of a NES to the Governor-General. These steps are:

- notifying the public and iwi authorities of the subject matter of the NES and the reasons for considering that it is consistent with the RMA
- establishing a process that gives the public and iwi authorities adequate time and opportunity to comment on the subject matter, and which requires a report and recommendations to be made to the

Minister on those comments and the subject matter of the NES

- publicly notifying the report and the recommendations.

This process is not required when amending a NES where the amendment has no more than a minor effect, or corrects errors or technical alterations.

#### Removal of plan rules that duplicate or conflict with national environmental standard provisions

Under section 44A, rules in plans that duplicate or conflict with provisions contained in a NES must be removed by amending the plan. This can be done without using the usual processes under Schedule 1, and must be done as soon as practicable after the NES comes into force.

A rule is deemed to conflict with a NES provision if:

- the plan rule is more restrictive than the NES provision and the NES, or
- a rule is more lenient than the NES provision.

Councils may amend their plans to include references to NES (such as in other rules where compliance with the NES may be relevant) without having to use Schedule 1.

Councils must now both observe a NES and enforce a NES to the extent that their powers allow.

Section 139 now enables councils to issue certificates of compliance where a NES makes an activity lawful without a resource consent (in addition to the existing power in respect of plan rules).



### **Minister's new national policy statement powers**

Section 51A enables the Minister for the Environment to withdraw part or all of a NPS at any time before it is approved under section 52(2). The Minister must give public notice of any such withdrawal.

If the withdrawal occurs before a board of inquiry reports back to the Minister, the board must either:

- withdraw all the matters it was appointed to inquire into and be discharged on and from the date of the public notice, or
- withdraw those matters (if not all) the board was appointed to inquire into and only inquire into those matters not withdrawn.

Under section 47A the Minister may also, at any time before a board of inquiry has reported back, direct the board to suspend its inquiry for a specified period or until a specific event occurs (such as the provision of additional information). The Minister must publicly notify the direction to suspend an inquiry, and give reasons for the direction.

The Minister can provide the board with additional information to consider and can direct that an inquiry be suspended for this purpose. Section 51(1)(ca) requires the board of inquiry to consider any additional material provided by the Minister.

### **Effect of a national policy statement on plan provisions**

Sections 55(2) to 55(2D) set out the process for changing policy statements and plans to give effect to a NPS.

Where a NPS directs a council to include specific objectives and policies in its policy statement and/or plan, under section 55(2), a council must make the changes without using Schedule 1, but must publicly notify the changes within five working days of making them. Such changes can not be appealed.

Councils must, under section 55(2B), make all other amendments to their policy statements or plans that are required to give effect to the NPS, and use the Schedule 1 process. Under section 290AA, these changes can only be appealed on points of law.

In either case, the amendments must be made as soon as practicable unless the NPS specifies a time, or specifies that amendments are required before a specific event happens.

### **Technical changes**

- Sections 9 and 11 to 17 now refer to NES to clarify the relationship between them and these sections.
- Section 35A requires councils to keep copies of NES in addition to keeping copies of NPS.
- Sections 104, 104A and 104C require NES and other regulations to be considered when making a decision on a resource consent.
- Section 113 requires the decision to record that any relevant NES and NPS were considered in a decision on a resource consent.
- NES, NPS and the New Zealand Coastal Policy Statement can incorporate external material by reference, to avoid repetition.

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