

Office of the Minister for the Environment
Cabinet Economic Growth and Infrastructure Committee

Resource Management (Simplification and Streamlining) Amendment Bill

Proposal

1. I propose that the Cabinet Economic Growth and Infrastructure Committee approves the Resource Management (Simplification and Streamlining) Amendment Bill (the Bill) for introduction into Parliament. I recommend that the Bill be referred to the Local Government and Environment Select Committee and complete its passage through Parliament by the end of June 2009.
2. With a first reading of the Bill proposed on 19 February, the Bill gives effect to the Government's commitment to introduce legislation that will reduce costs and improve the timeliness of Resource Management Act (RMA) processes into the House within 100 days of the formation of the new government.
3. Cabinet on 9 February 2009 gave the Cabinet Economic Growth and Infrastructure Committee on 18 February the power to act on this paper and make decisions [Cab Min (09) 4/14].

Background and Process

4. On 2 February Cabinet agreed to the key policies in nine main areas [CAB Min (09) 3/7 refers], as follows:
 - a. Removing frivolous, vexatious and anti-competitive objections
 - b. Streamlining processes for proposals of national significance
 - c. Creating an Environmental Protection Authority
 - d. Improving plan development and plan change processes
 - e. Improving resource consent processes
 - f. Improving national instruments
 - g. Streamlining decision making
 - h. Improving workability and compliance
5. On 9 February Cabinet reached agreement on the only outstanding matter relating to restricting appeals beyond a board of inquiry for proposals of national significance [CAB Min (09) 4/11 refers].
6. Details of the reforms are contained in Appendix 1 to this paper.
7. There are several changes to policy required to clarify or expand decisions. These are of minor consequence and follow from issues found during the drafting process. These changes are as follows:

- i. Recommendation 89 of CAB Min (09) 3/7 advertently included references to plan changes as a matter that could be referred directly to the Environment Court. I consider it is inappropriate for the Environment Court to be making decisions on local authority policy matters and it is inconsistent with the recommendation with respect to limiting Environment Court appeals on plans. I recommend that the references to plan changes be amended accordingly.
- j. The policy intention is to bring the Minister of Conservation's role in line with that of the Minister for the Environment with respect to call in. This means a new recommendation is needed to remove the Minister of Conservation's role as final decision maker in relation to restricted coastal activities and any other matter wholly in the coastal marine area that is called in.
- k. Appeals on any decisions from either a board of inquiry or the Environment Court should be able to be appealed to the High Court on points of law and then only to the Supreme Court if it finds there are exceptional circumstances to hear the matter. The recommendation on this refers only to appeals of board of inquiry decisions. This should be expanded to include appeals on decisions made by the Environment Court on a matter that has been called in.
- l. Notices of requirement were inadvertently left out of recommendations 86 and 87 in CAB Min (09) 3/7 and should be included.
- m. Certificates of compliance that can be issued by the Environmental Protection Authority should be limited to those concerning matters of national significance.
- n. It needs to be clarified that removing blanket tree protection rules applies to existing rules in district plans. There needs to be a transitional period of 24 months for councils to develop a schedule of trees of high value for protection.
- o. Additional direction is needed to give the Minister for the Environment the power to direct a review of the whole or part of a plan. This corresponds with the recommendation to remove the mandatory ten year review of district plans. I consider this should apply to both regional councils and territorial authorities – even though the requirement to remove the mandatory ten year plan review has been removed for district plans only. Within the ten year period for a regional plan, resource management issues could have emerged which mean the council should be reviewing the whole or part of its regional plan. This power to direct a review should be given also to the Minister of Conservation with respect to regional coastal plans.
- p. Recommendation 10 of CAB Min (09) 3/7 needs to be expanded to specify that trade competitor participation in proceedings as a third party is excluded only when the participation is motivated by trade competition.
- q. Recommendation 8 of CAB Min (09) 3/7 inadvertently included reference to plan changes which need to be removed. This is because a “proposed policy statement or plan” already covers council plan changes. Private plan changes are already covered in recommendation 7 of CAB Min (09) 3/7. Leaving the two references to plan changes creates duplicate and conflicting tests.

- r. Finally, I consider that the minor and technical amendments should include the ability to incorporate material by reference in regulations made under section 360. This will assist in keeping such regulations up to date and brings these regulations in line with national environmental standards, national policy statement and the national coastal policy statement.

Possible contentious issues

8. Possible contentious issues in relation to the Bill are:

Reduction in the rights of public participation

- limiting appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought the leave of the Environment Court.
- removing the current presumption in favour of notification of resource consent applications and amending the criteria for when public notification is required on projects with more than minor effects on the wider environment
- enabling applicants for resource consents and notices of requirement to request that their application be determined in the Environment Court without the need to go through local authority consenting processes, provided that the local authority has first agreed
- reinstating the Environment Court's power to require security for costs
- Changing section 274 to prevent parties other than the Attorney General from joining an appeal on the basis of representing a relevant aspect of the public interest.

Other significant changes

- removing the "non-complying activity" category of activities with a three year transitional period
- removing the Minister of Conservation's powers in respect of decision making on resource consent applications for restricted coastal activities
- incorporation of a damages regime for proceedings brought by a person against a trade competitor, and limitations on trade competitors making submissions
- enabling enforcement action (enforcement orders, abatement notices, excessive noise directions or prosecutions) to be taken against the Crown
- providing that decisions on notices of requirements are made by the relevant territorial authority instead of the requiring authority, as is currently the case

- removing the requirement for territorial authorities to review their plans every 10 years and enabling territorial authorities to change their plans as and when required
 - the lapsing of an application for resource consent lodged prior to the commencement of the Resource Management Amendment Act 2005 where no response to a further information request has been received for twelve months
 - requiring that rules in proposed plans shall have no legal effect until such time as decisions made on submissions have been notified, except where such rules are required to protect a natural resource, historic heritage or apply to an aquaculture management area, or are subject to a court order.
9. Significant changes to the RMA are necessary to achieve a substantial reduction in costs and time delays. This will mean some of the existing rights of public participation have to be constrained or rationalised. It is not possible to retain the extensive opportunities for public involvement in plan making and resource consent decision making and expect to see significant improvement in RMA processes. These changes are expected to be controversial, although have received wide support from local government and business. The Select Committee process will give the public the chance to debate where the balance should be between the right of public participation and sensible and timely resource management processes.
 10. Other changes are required in order to reduce costs, simplify processes and remove the potential for conflict of interests between roles of agencies.

Regulatory impact analysis

11. A regulatory impact statement was prepared in accordance with the necessary requirements, and was submitted at the time Cabinet considered and approved the policy relating the Bill.

Compliance

12. The Resource Management (Simplification and Streamlining) Amendment Bill complies with:
 - a. the principles of the Treaty of Waitangi;
 - b. the principles and guidelines set out in the Privacy Act 1993; and
 - c. relevant international standards and obligations.
13. The Attorney General, Minister for Treaty of Waitangi Negotiations and the Minister for the Environment have agreed that the review of the RMA will not compromise any obligations made under an existing Foreshore and Seabed Deed of Agreement or Historical Treaty settlement. The provisions of the Bill have been drafted accordingly.
14. As resource management issues often have Treaty implications consultation with Maori is generally an important aspect of compliance with Treaty principles when proposing changes to resource management legislation. In this instance

consultation with Maori as with most parties, has been limited by time constraints. Phase two will cover more complex and substantive issues such as natural resource allocation and will therefore involve a fuller process for engaging with Maori.

15. The Bill proposes to expand the personal information that can be required from an individual – by requiring suspected offenders to provide their date of birth to an enforcement officer. I consider this is justified as establishing identity is fundamental to improving enforcement under the RMA.
16. The Ministry of Justice will provide a report on the implications of the proposed Bill in terms of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
17. The Legislative Advisory Committee Guidelines on the process and content of legislation have been considered. The policy objectives have been defined and options other than legislation have been considered in the regulatory impact statement. There has been limited opportunity for consultation both within and outside of Government because of the time constraints of introducing the Bill within 100 days of forming a Government. I have been assisted in the development of the package of policy proposals by the Technical Advisory Group.
18. Rights of public participation have been altered to achieve the overall purpose of the legislation or to reduce time and costs of RMA processes. However the fundamental rights to participate remain – any person can make a submission on a plan or policy statement or resource consent that has been notified on legitimate environmental issues. Rights of appeal on points of law to the High Court have been retained although rights to lodge an appeal on the merits of a decision on a plan or policy statement have been constrained.
19. It is proposed that decisions from boards of inquiry or the Environment Court on matters that have been called in will be appealed to the High Court on points of law. No appeal will be allowed to the Court of Appeal from the High Court decision, rather a party may appeal from the High Court to the Supreme Court only if the Supreme Court finds there is exceptional circumstances to hear the matter.
20. The removal of the presumption on public notification reflects practice whereby the majority of consent applications are not notified because it is considered that compliance with provisions in a RMA plan alone are adequate to address adverse effects.
21. There are no compensation provisions required. Transitional and savings provisions will be required in order to ensure there is minimum disruption to matters already under consideration under the RMA.

Consultation

22. In preparing this paper the following government departments and government agencies were consulted: Department of Building and Housing, Department of Conservation, Ministry of Fisheries, Department of Internal Affairs, Energy Efficiency and Conservation Authority, Ministry of Agriculture and Forestry, Ministry of Culture and Heritage, Ministry of Economic Development, Ministry of Justice, Ministry of Transport, New Zealand Transport Authority, State Services Commission, Te Puni Kokiri and the Treasury.
23. The Department of the Prime Minister and Cabinet has been informed.

24. The drafting process has uncovered a number of technical and interpretation issues which has required refinement to some of the policy decisions taken by Cabinet on 2 February. Departments have had limited opportunity to consider the implications of the proposed changes to the policy decisions and some departments have expressed concern about this.
25. The Department of Conservation is particularly concerned that changes are proposed to the Minister of Conservation's call in powers without any policy development or discussion. Where there has been no policy developed or discussions about proposed changes to the policy expressed in the Cabinet Minute, the Department's view is that those matters should be dealt with as part of Phase Two of the RMA reform.
26. The Department of Conservation considers that changes to call-in powers have a relationship with the Foreshore and Seabed legislation and as such should be dealt with as part of the wider review of matters related to Restricted Coastal Activities.
27. The Department of Conservation is concerned about the way in which the drafting has narrowed the scope of recommendation 52. I consider that the term "natural resources" needs to be defined in the drafting to avoid undermining the purpose of the recommendation. A broad definition will mean that the status quo will effectively be retained.
28. In early December I invited comments from local authorities and others about how the RMA could be improved. These ideas and views put forward were considered in the preparation of the policy proposals.
29. The Technical Advisory Group has been involved in the development of the package of reforms and has provided comment on some possible wording of provisions. I have also had discussions with Principal Environment Judge Bollard about the potential impact of the proposed reform on the functions and resourcing of the Environment Court.
30. I have discussed the proposed policy package with members of the ACT Party and Maori Party.

Binding on the Crown

31. The RMA binds the Crown but the Crown is currently immune from enforcement action taken under it. Cabinet has agreed that this Bill will remove this immunity and add provisions to provide for enforcement action by local authorities against the Crown.

Creating new agencies or amending law relating to existing agencies.

32. This Bill proposes that an Environmental Protection Authority (EPA) be established as a transitional measure, as a statutory office. Under the proposed amendments the EPA will receive applications for proposals of national significance and make recommendations to the Minister about how these matters should be processed.
33. In the interim the roles, functions and powers of the EPA will be exercised by the Secretary for the Environment. The Secretary will be able to delegate these

functions to his or her employees within the Ministry for the Environment with the work to be undertaken by a dedicated unit.

34. Establishing the EPA as a statutory office will ensure the necessary separation from the Ministry for the Environment's core business. The EPA will benefit in its establishment phase from the expertise of the existing call-in processing unit within the Ministry for the Environment.
35. Phase 2 of the RMA reform will consider options for establishing an EPA with broader functions and responsibilities.
36. The Ombudsmen Act 1975 and the Official Information Act will apply to the Secretary for the Environment when exercising the statutory functions of the EPA.

Allocation of decision making powers

37. The Bill proposes a number of changes to current decision making powers of the government agencies and the courts.
38. Cabinet has agreed that the Minister of Conservation's decision making role with respect to restricted coastal activities should be removed.
39. The Bill proposes to remove the ability of requiring authority to make a decision on notices of requirements and the decision will now be made by the local authority. Requiring authorities are defined to include Ministers of the Crown and local authorities. This will mean that the decision making powers of Ministers of the Crown are changed where notices of requirement are being sought.
40. The Bill provides for the Minister for the Environment (and for the Minister of Conservation for matters that are wholly within the coastal marine area and are called in) to have wider powers to call-in council plan changes and to direct which procedural path they will follow.
41. The Bill provides for the Secretary for the Environment to have the roles and functions of the statutory office of the Environmental Protection authority. This is a transitional measure but I consider that the functions have been clearly specified for this office in this Bill.
42. The Bill proposes a significant number of changes in the role of the Environment Court. It is proposed that Environment Court will be able to require security for costs. This is a role that the Environment Court was previously given which was removed in 2003. The Bill clarifies the role of the Environment Court with respect to awarding indemnity costs.
43. The Environment Court will be able to receive applications directly from applicants (with the consent of the local authority) without there being a hearing and decision by the local authority first. Direct referral will require the consent of the local authority. While this has the potential to impact significantly on the workload of the Environment Court, these are expected to be applications that would have been appealed to the Environment Court. The Court will no longer be considering an appeal but will be the first instance decision maker. As appeals are already effectively de novo this should not mean a significant difference in the role of the Court. A filing fee will need to be introduced that will enable the Environment Court to recover a large proportion of its costs.
44. The Environment Court will be able to determine applications from councils for rules in proposed plans to take effect at the time they are notified.

45. It is proposed that submitters on a plan will not be able to appeal a council's decision to the Environment Court without seeking the leave of the Environment Court, except on questions of law. This will change the role of the Environment Court by substantially reducing its specialist environmental jurisdiction in respect of plans. Ministry of Justice considers the right to lodge an appeal on a plan as a basic requirement of the New Zealand Court system and do not support the proposed requirement to seek leave for appeals. This is a significant change but it is necessary in order to gain substantial improvements in the timeframe for the plan development process.
46. The Bill proposes to reverse an earlier amendment which would have given the Environment Court the ability to make declarations on decisions made on notification. These provisions were to have been brought into force by way of Order in Council, but this never occurred. To avoid overloading the Environment Court, it is proposed that this be retained with the High Court as is current practice.
47. I consider the Court is equipped to undertake the additional functions required under the Bill. In some cases the legislation will provide guidance on how the new powers will be exercised in other cases it is expected that the Environment Court in time will produce its own practice notes.
48. The Bill proposes to increase the number of Environment Judges from 8 to 10 in recognition of the additional workload expected.
49. Under the prosecution provisions the District Court will now be able to order the local authority to review the resource consent held by an offender. This will provide the Court with a further enforcement option. The Bill provides also for increased penalties to be imposed.
50. The Bill will provide for the District Court to consider a case against the Crown for a breach of the RMA, plan or consent. This is a significant change but I consider it to be justified as the Crown should be required to follow the requirements of the RMA, plan, policy statement, national environmental standard or any consent condition in the same way as any other participant under the RMA.
51. It is proposed that the High Court will be able to award general damages against parties whose actions were motivated by trade competition. The Court will also be able to award full costs against third parties when they have failed to disclose that role as surrogates for trade competitors.
52. It is proposed that for proposal of national significance appeals on Board of Inquiry decisions will be appealed to the High Court on points of law. No appeal will be allowed to the Court of Appeal from the High Court decision, rather a party may appeal from the High Court to the Supreme Court only if the Supreme Court finds there are exceptional circumstances to hear the matter. This is to ensure the timely resolution of any appeals related to matters of national significance that have been called in.

Associated regulations

53. There will be changes to forms, fees and processes provided for in amendments to the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

Deemed regulations

54. There are no deemed regulations proposed.

Definition of Minister/department

55. Not applicable.

Commencement of legislation

56. The Bill will come into force on the day after it receives Royal Assent with the exception of the provisions related to the removal of non-complying activities which will come into effect 36 months after Royal Assent. There will also be a twelve month delay to the requirement for councils to have a policy on complaints against late consents and discounts in processing fees and a 24 month period for the removal of blanket tree protection rules from district plans.

57. There will be other transitional provisions where required to ensure that procedures already under way are not disrupted.

Parliamentary stages

58. A place on the 2009 legislative programme will need to be found for the Bill.

59. I recommend that the Bill be introduced in mid February 2009. I propose that the Bill be referred to the Local Government and Environment Select Committee.

60. I recommend that the Bill complete its passage through the Parliament by the end of June 2009. This will mean the Committee have 4 months for its deliberations and considerations and will be required to report the Bill back to the House on 18 June.

Recommendations

61. I recommend that the Cabinet Economic Growth and Infrastructure Committee:

1. **note** that the Resource Management (Simplification and Streamlining) Amendment Bill will provide for improvements in the plan making, resource consent, enforcement and other provisions of the RMA
2. **note** on 2 February 2009 Cabinet agreed the policy decisions that form the basis of the Resource Management (Simplification and Streamlining) Amendment Bill [CAB Min (09) 3/7 refers]
3. **note** that CAB Min (09) 3/7 [paragraph 89] agreed applicants for resource consents, plan changes and notices of requirement be able to request that their applications be directly referred to the Environment Court for a decision, provided that the permission of the local authority that would otherwise have made the decision has been obtained
4. **agree** plan changes should not be able to be directly referred to the Environment Court

5. **agree** to remove the Minister of Conservation's role as final decision maker in relation to any other matter wholly in the coastal marine area that is called in
6. **note** that CAB Min (09) 4/11 agreed on the process for appeals form a board of inquiry for proposals of national significance
7. **agree** that the decision of the Environment Court on a matter that has been called in have the same appeal rights as applied in CAB Min (09) 4/11 to a matter considered by board of inquiry
8. **note** that CAB Min (09) 3/7 [paragraph] 86 agreed for an applicant for a resource consent or a submitter to elect an independent panel of commissioners to hear an application, and that CAB Min (09) 3/7 [paragraph 87] agreed for a submitter to pay the additional costs where they have elected to have an application heard by an independent commissioner
9. **agree** that an applicant for, or a submitter to, a notice of requirement is also able to choose whether the application or submission is heard before one or more independent commissioners selected from a pool of persons accredited under the Making Good Decisions programme, or by elected representatives of the local authority (or authorities in the event of a joint hearing) and the applicant or submitter should pay any additional costs of the hearing
10. **note** that CAB Min (09) 3/7 [paragraph 28] agreed to enable the Environment Protection Authority to issue certificates of compliance
11. **agree** that the Environment Protection Authority can only issue certificates of compliance that relate to matters of national significance
12. **note** CAB Min (09) 3/7 [paragraph 61] agreed that provisions be inserted into the RMA that remove the ability for blanket tree protection rules to be imposed in urban areas
13. **agree** that removing blanket tree protection rules in urban areas extends to the removal of the relevant rules in existing district plans
14. **agree** to provide for a transitional period of 24 months for councils to develop a schedule of trees of high values for protection
15. **note** that CAB Min (09) 3/7 [paragraph 51] agreed that the requirement for district plans prepared by territorial authorities to be reviewed every 10 years with a requirement that such plans be changed or reviewed as and when considered necessary
16. **agree** that the Minister for the Environment the power to direct a review of the whole or part of a district or regional plan and agree that the Minister of Conservation has the power to direct a review of the whole or part a regional coastal plan
17. **note** that CAB Min (09) 3/7 [paragraph 10] agreed that the ability of trade competitors to take part in appeals as third parties be removed from the RMA
18. **agree** that trade competitor participation in proceedings as a third party is excluded unless they are directly affected and the effect concerned does not relate to trade competition

19. **note** that CAB Min (09) 3/7 [paragraph 7] agreed that the RMA be amended to state that a submission in opposition to a resource consent or private plan change application by a trade competitor can be made by any person provided that person is directly affected and the effect concerned does not relate to trade competition
20. **note that** CAB Min (09) 3/7 [paragraph 8] to amend Schedule One (plan making and changing processes) to state that a submission on a proposed policy statement, plan or plan change that concerns the activity of a trade competitor can be made by any person provided that person is directly affected and the effect concerned does not relate to trade competition
21. **agree** to remove the reference to plan changes in the amendments to Schedule one
22. **agree** that regulations made under section 360 should be able to incorporate material by reference
23. **approve** the Resource Management (Simplification and Streamlining) Amendment Bill for introduction
24. **agree** that the Bill be introduced on 19 February 2009 and have its first reading the same day
25. **agree** that the government proposes that:
 - 25.1 the Bill be referred to the Local Government and Environment Select Committee
 - 25.2 the Select Committee be required to report the Bill back to the House by 18 June 2009
 - 25.2 the Bill enacted, if possible, by the end of June 2009

Hon Dr Nick Smith
Minister for the Environment

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Appendix 1: Outline of proposed changes [CAB Min (09) 3/7 and CAB Min (09) 4/11 refer]

Removing frivolous, vexatious and anti-competitive objections

1. A package of amendments has been proposed to discourage submitters and appellants from bringing cases with little or no merit and trade competitors from using the RMA to delay or thwart projects.
2. These include: reinstatement of the powers of the Environment Court to award security for costs; agreeing that all current provisions of the RMA that prohibit consideration of trade competition be amended to also prohibit consideration of the effects of trade competition and agreeing that the effects of trade competition are excluded when forming an opinion about resource consent notification requirements. The Bill clarifies that there is no ability for trade competitors to oppose a rival company's consent application or private plan change if the opposition is motivated by trade competition. The Bill requires third parties that are supported, funded or encouraged by a trade competitor to disclose that information, and will provide sanctions for non disclosure. The Bill removes the ability of trade competitors to take part in appeals of third parties.
3. The Bill clarifies that the Court can award indemnity costs. It is also proposed that the RMA be amended to incorporate a damages regime for proceedings brought by a person against a trade competitor. This new provision will indicate that if an appeal is brought, financed or encouraged by trade competition motives, then the party whose position was adversely affected by the appeal may seek to recover the costs and the damages associated with the appeal.
4. Such a regime would apply where the Court considers it is appropriate to compensate a party whose position is adversely affected by a trade competition appeal, and it is necessary to punish the party that brought (or continued) such an appeal.

Streamlining processes for proposals of national significance

5. Cabinet has agreed to expand the existing powers of ministerial intervention under the RMA to provide an efficient and robust process for resource consent applications, plan changes (including council initiated plan changes) and notices of requirement for large infrastructure or public work projects that are of national significance.
6. The Bill provides an option for applicants to make applications directly to an EPA for assessment and recommendation to the Minister. Eligibility will be determined by the Minister having regard to the existing 'national significance' matters already set out in section 141B of the RMA, with the addition of one new factor to recognize the operational infrastructure needs of a nationwide network utility operator.
7. If the Minister considers that the matter is of national significance, he may refer it to a board of inquiry or the Environment Court for a decision. If the Minister decides not to call in the relevant matter, he will refer it back to the relevant local authority for determination under normal processes.
8. As currently provided in the RMA boards of inquiry will be chaired by a current, former or retired Environment Judge. Cabinet has agreed that the board appointment process will include a requirement for the Minister to seek nominations for the board from the local authorities within whose area the

application occurs, and a requirement for the Board to include a person with local knowledge.

9. Cabinet has agreed that the number of Environment Judges will be increased from 8 to 10 and has invited Ministers for the Environment and Courts to report back on the financial implications by the end of March 2009.
10. The Bill requires that a final decision by the board on the application must be made within 9 months of the date of application notification, with the Minister for the Environment (or the Minister of Conservation for matters that are wholly within the coastal marine area and are called in) having the power to extend this timeframe if he or she is satisfied that there is justification for doing so.
11. Cabinet has agreed that any appeals on a decision of a board of inquiry will be made to the High Court on points of law. There will be no appeals to the Court of Appeal. A party may appeal from the High Court to the Supreme Court only if the Supreme Court finds there are exceptional circumstances to hear the matter. The Supreme Court will give priority to the determination of leave and to any appeal it decides to hear.
12. Minor changes have been made to improve the board of inquiry process such as clarifying that a board can seek further information and commission reports, and restricting comments on the draft decision to minor and technical issues only. Board of inquiry members will be given legal protection against actions arising out of any acts or omissions made in good faith.
13. Where a matter has been called in, persons will be able to apply to the EPA for supplementary consents (or change of conditions) and alterations to designations and heritage order that relate to the same proposal. The EPA will make a recommendation to the Minister and the Minister will decide whether the matter should be referred to a board of inquiry or the Environment Court, or the relevant local authority, for a decision.
14. Any person will also be able to apply to the EPA for a certificate of compliance. .

Creating an Environmental Protection Authority

15. As a transitional measure, Cabinet has agreed to the establishment of an EPA as a statutory office. The roles, functions and powers of the EPA, for the time being, will be exercised by the Secretary for the Environment. These roles will relate to receiving and processing proposals of national significance and the EPA will also provide secretariat and support services to the boards of inquiry.
16. The Secretary will be able to delegate these functions to his or her employees within the Ministry for the Environment, to allow the administrative work to be carried out by a dedicated unit. The creation of the EPA as a statutory office gives the necessary degree of separation from the Ministry for the Environment's core business.

Improving plan development and plan change processes

17. Cabinet has agreed to a package of measures that will improve the plan development and plan change processes. The key changes are:
 - removing the ability for appellants to make general challenges to; or seek the withdrawal of; entire proposed policy statements and plans
 - clarifying that notification and service of documents can occur through electronic means

- extending the period under which consultation carried out under other legislative requirements can be used for RMA purposes from 12 to 36 months
- replacing the requirement for local authorities to summarise submissions and call for further submissions on proposed policy statements and plans with a requirement for local authorities to consult any person the local authority considers may be affected by the matters raised in submissions and these matters must be taken into account in the council's hearing and decision.
- removing the non-complying activity category of activities. Cabinet has agreed to a three year transitional period together with a deeming provision so that these activities become classified as full discretionary activities after the transitional period
- simplifying the requirements so local authority decisions on submissions on plans and policy statements do not need to be made in respect of each individual submission but are to be made according to issues raised and clarifying notification and documentation requirements.
- enabling the regional council and all territorial authorities in a region to combine to produce a single RMA planning document, including the regional policy statement
- removing the requirement for territorial authorities to review their plans every 10 years and enabling territorial authorities to change their plans as and when required
- requiring that rules in proposed plans shall have no legal effect until such time as decisions made on submissions have been notified, except where such rules are required to protect a natural resource, historic heritage or apply to an aquaculture management area. A local authority may apply to the Environment Court to have particular rules take effect earlier if they do not meet the above criteria
- limiting appeals on proposed policy statements and plans to questions of law, except in cases where the appellant has sought the leave of the Environment Court on the basis that the proposed policy statement or plan would have a significant impact on existing property rights; fail to give effect to matters provided in Part II of the RMA or are of unclear meaning and effect.

Improving resource consent processes

18. Cabinet has agreed to a package of measures to improve resource consent processes which include removing the current presumption in favour of notification of resource consent applications and amending the criteria for when public notification is required on projects with more than minor effects on the wider environment. The Bill will repeal sections of the RMA that would have allowed the Environment Court to review notification decisions but have not yet come into force. These review powers will remain with the High Court.
19. In order to assist councils process consents more efficiently and reduce the administrative burden of councils, Cabinet has agreed to simplify the reporting requirements for council decisions and remove the need for material to be repeated or restated in subsequent hearing reports or decision reports. The Bill

clarifies that notification and serving of documents can occur through electronic means.

20. Provisions will be inserted into the RMA that remove the ability for blanket tree protection rules to be imposed in urban areas. These rules generate more than 4000 resource consent applications annually.
21. Cabinet has agreed to limit the ability for local authorities to 'stop the processing clock' during requests for further information from applicants. It is proposed to limit it to the first request only. There will be no further ability for the local authority to stop the clock in conjunction with further requests for information. If the applicant refuses to supply information or does not supply it within the required timeframe, the consent authority must continue processing the application. The local authority must have regard to the adequacy of information supplied when making a decision. The specific appeal and objection rights relating to further information requests will be removed. Where there are outstanding requests for further information on a resource consent application lodged prior to the 2005 amendments and the information has not been supplied, the application will lapse 12 months from the date of the original request.
22. It is proposed to clarify that consideration of Part II matters of the RMA for controlled and restricted discretionary activities be limited to those matters that the council has expressly reserved discretion or control over.
23. The Bill will require that all councils develop a process for a complaints and fees discount policy in respect of late consent processing, within 12 months of enactment. The Bill will also provide for resource consent hearings to be formally closed no later than 10 working days following completion of the last party's presentation at the hearing.

Improving national instruments

24. Cabinet has agreed to a number of amendments to improve the effectiveness of national policy statements and national environmental standards and to reduce the costs of implementation by local government.
25. Cabinet has agreed to the following changes:
 - providing the Minister for the Environment (and Minister for Conservation in respect of the New Zealand Coastal Policy Statement) with powers to cancel, postpone and restart a national policy statement development process that has already commenced at any time before it is gazetted
 - enabling national policy statements to direct that a local authority must change the objectives and policies of policy statements and plans without the need for further formal plan change processes, regardless of how the national policy statement was developed.
 - establishing that appeals on changes to plans and regional policy statements that are implementing objectives and policies of a national policy statement shall be limited to points of law only
 - clarifying the effect of a national environmental standard on existing resource consent applications, that consent authorities must have regard to the relevant provisions of a national environmental standard when making decisions on resource consents, and that consent authorities be given an explicit responsibility for enforcement of national environmental

standard and the ability to issue certificates of compliance where activities comply with the provisions of a national environmental standard

- enabling the Minister for the Environment to make minor amendments to and correct errors in national environmental standard already in force, and national environmental standard to be referred to in a plan, and provisions in plans that conflict or are made redundant by national environmental standard to be removed, without the requirement for a formal plan change process.

Improving workability and compliance

26. Cabinet has agreed to measures to improve the effectiveness of compliance mechanisms including: :

- raising the maximum fine for committing an offence under the RMA from \$200,000 to \$300,000 for private individuals and introducing a new maximum fine level of \$600,000 for corporate offenders
- providing the Court with the power to require a review of a resource consent held by an offender
- enabling an enforcement officer to direct a person suspected of an offence under the RMA to supply their date of birth
- enabling enforcement action (enforcement orders, abatement notices, excessive noise directions or prosecutions) to be taken against the Crown by local authorities
- enabling electronic servicing of documents and exchange of written evidence for enforcement proceedings
- extending the general duty to avoid, remedy or mitigate adverse effects to cover adverse effects associated with the existing use of land or buildings under section 10B of the RMA.

Streamlining Decision Making

27. Amendments have been proposed to reduce the costs and delays of the decision making process. Cabinet has agreed that the Bill will provide for resource consent applicants or submitters to choose whether to have a notified resource consent application (and any private plan change when heard in tandem) considered by elected representatives of the local authority or by one or more independent commissioners selected by the local authority from the pool of persons accredited under the "Making Good Decisions" programme. Any additional costs incurred by the use of the independent commissioner are to be borne by the requestor.

28. To complement the changes recommended for proposals of national significance, Cabinet has agreed that applicants for resource consents and notices of requirement should be able to request that their application be determined in the Environment Court without the need to go through local authority consenting processes, provided that the local authority has first agreed.

29. The Bill proposes increasing the filing fee for the lodgement of appeals to the Environment Court from \$55 to \$500 by regulation

30. The Bill proposes to remove the Minister of Conservation's powers in respect of decision making on resource consent applications for restricted coastal activities.

The proposal would mean that the current recommendation of the hearing panel to the Minister would become the decision.

31. Cabinet has decided that the RMA should be amended so that decisions on notices of requirements are made by the relevant territorial authority instead of a requiring authority, as is currently the case. This will bring the decision-making process for designations into line with other processes in the RMA, improve the timeliness of decision-making (by removing a step in the process), and add to confidence in the independence and rigour of the decision-making process.

Other matters to improve workability

32. Cabinet has agreed to a number to minor changes related to timeframes and the replacement of out of date references in the RMA.
33. It is proposed that the timeframes under which third parties must lodge their notice to participate in an appeal be shortened from 30 to 15 working days. A change is also proposed to section 274 to prevent parties from joining an appeal on the basis of representing a relevant aspect of the public interest. The Attorney-General will continue to have this right.
34. Cabinet has agreed that the limited notification provisions under the RMA be extended to cover notices of requirement.
35. Other minor and technical changes have been approved and authorisation has been given to include transitional provisions in the Bill.