RECENT DEVELOPMENTS

New Zealand

Reform of the *Resource Management Act* 1991

Bill to Limit Costs to Public Interest Litigants

Reform of the *Resource Management Act* 1991

In November 1998 the New Zealand Government released its proposals for amendment to the *Resource Management Act* 1991 (RMA). Submissions were invited and over 750 were received. The Ministry for the Environment is currently considering them and a draft bill is expected in May.

The RMA is the cornerstone of New Zealand's environmental legislation and the current round of amendments is the most significant since it was enacted. The stated purpose of the reform is to reduce unnecessary delays and costs arising from the RMA process while maintaining the environmental objectives of the Act. As a result, no significant changes have been proposed for the purpose and principles of the Act.

The proposed changes affect nearly every part of the Act, but the most significant are:

- to remove social and economic factors from the definition of "environment".
- to remove considerations of "aesthetic coherence" when taking into account " amenity values".

the introduction of a contestable resource consent processing system whereby private consultants as well as Council officers can process applications.

possible removal of full de novo appeal rights to the Environment Court from decisions of local authorities and to limit appeals to questions of law.

more widespread use of independent commissioners to decide on resource consent applications instead of local authorities as at present.

introduction of the ability to refer resource consent applications to the Environment Court directly .

limiting the effect of proposed plans until their content is settled.

introduction of limited public notification of resource consent applications where the effects are minor.

changes to simplify the factors to be considered for resource consent applications.

increased scrutiny and analysis of proposed plans in an effort to reduce unnecessary and inefficient regulation.

One of the most controversial proposals has been to amend the definition of "environment". The change was promoted in an effort to prevent local authorities from managing social andeconomic matters under the guise of environmental planning. This has attracted a large number of submissions - some from those who believe that managing social and economic conditions is a key element of local authority functions, while others have argued that it has lead to unnecessary intervention in the market, allowing councils to protect trade interests and to "pick winners". The Minister has reported a wide range of views on this issue and it is likely to be one of the most hotly contested amendments should it be included in the draft bill.

Another controversial proposal is the move to introduce contestable, privately managed resource consent processing. Business interests have generally supported the concept, while environmental groups have argued that it will lead to reduced public participation. The majority of Councils support the proposal, but a number of criticisms have been noted by the Ministry. Issues have been raised concerning the liability and accountability for recommendations made by processors; the possibility that processing costs will increase; the inadequacy of the current accreditation proposals; the potential for inconsistent decisions between processors; and removal of the present ability for Councils to act as a "one stop shop" for all local Government approvals.

The Minister has responded by saying that Ministry officials will need to revisit the Government proposals to address a number of these issues and changes are likely to be adopted in the draft bill.

Bill to Limit Costs to Public Interest Litigants

The aim of the recently introduced *Resource Management (Costs) Amendment Bill*, is to remove any disincentive to community and environmental groups bringing proceedings because of the possibility of costs being awarded against them. If enacted in its present form, the bill would prevent the Environment Court from awarding costs against such a group unless it had "proceeded in reckless disregard of the law or facts of the case."

Many have questioned the need for such legislation. The Court already makes substantial allowances for environmental groups in exercising its discretion. Over a number of years it has developed a reasoned approach involving consideration of a range of factors, most recently reviewed in *Minhinnick v Watercare Services Ltd* A1139/98 (discussed later in the 'case notes' section of this journal). In view of this, some have argued that the bill is unnecessary, the suggested test too inflexible, and that it will prevent successful parties from being compensated for their costs merely because an opponent is a public interest group. Submitters on the bill will be able to be heard before a parliamentary select committee later this year.

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