

Resource Management and Electricity Legislation Amendment Bill

1 November 2004

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
RESOURCE MANAGEMENT AMENDMENT BILL (No 4) [1]

1. We have considered the Resource Management Amendment Bill (No 4) (PCO version 6193/1) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that this Bill is to be considered by the Cabinet Legislation Committee at its meeting on 4 November 2004. We received this Bill last Thursday and have consequently been asked to consider this Bill under some urgency.
2. The Bill amends the Resource Management Act 1991 ("the RMA"). The explanatory note to the Bill states that the intention of the amendments is to improve the "quality of decisions and processes" within the RMA framework by "increasing certainty and reducing delays, costs and incorrect use of processes, while ensuring appropriate public participation and the meeting of environmental objective."
3. The key measures in the Bill therefore:
 - establishes a requirement that the majority membership of hearings panels are "accredited" for hearing resource consents, private plan changes, designation and heritage order hearings;
 - empowers all hearings panels with more inquisitorial powers;
 - focuses appeals in the Environment Court on testing the merits of the first (local authority) hearing;
 - provides new mechanisms for non-local decision making that build on the existing ministerial call-in processes;
 - streamlines the plan making process;
 - provides an assurance for business that existing investment is recognised when consents expire and need to be reapplied for;
 - gives greater strategic importance to regional policy statements; and
 - provides for notification decisions of consent authorities to be challenged in the Environment Court.
4. We have considered whether the measures in this Bill raise issues of consistency with the Bill of Rights Act. We have given particular consideration to whether the changes in the hearings process and the role of the Environment Court raise issues with the right to the observance of the principles of natural justice (section 27(1)). We are mindful that the requirements of natural justice are flexible in practice, the scope and content of which adapts to the particular policy context and decision-making process.[2] In other words, the principal consideration appears to be whether, on balance, the process appears to be fair in that particular situation.[3]
5. We have looked to the intention of this Bill (as set out in paragraph 2) and, on this basis, we consider that the Bill appears to be consistent with the Bill of Rights Act.

Conclusion

6. We have considered whether provisions of the Resource Management Amendment Bill (No 4) raise issues of consistency with the Bill of Rights Act, and principally section 27(1) of that Act. We have come to the conclusion that the Bill appears to be consistent with the Bill of Rights Act.
7. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Minister for the Environment and Hon Dr Michael Cullen, Leader of the House, if you agree.

Roger Palariet

Boris van Beusekom

Acting Chief Legal Counsel

Senior Adviser

Office of Legal Counsel

Bill of Rights/Human Rights Team

cc

Minister of Justice

Minister for the Environment

Leader of the House

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Footnotes

1. The title of the Bill vetted by the Ministry was the Resource Management Amendment Bill (no 4). The name of the Bill was subsequently changed and introduction version of the Bill is the Resource Management and Electricity Legislation Amendment Bill. The substance of the Bill remained the same.
2. See *Drew v A-G* (No 2) (2001) 18 CRNZ 460 (CA) at 479 and *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130 at 139.
3. Potter J in *P v Department of Child, Youth and Family Services* [2001] NZFLR 721 at 753.