

Environmental Protection Authority Bill

The Environmental Protection Authority Bill ("the Bill") which establishes the new Environmental Protection Authority ("EPA") was introduced to parliament on 16 November 2010 and is awaiting its first reading. The purpose of creating an EPA is to *"more effectively, efficiently and transparently manage the regulation of New Zealand's environment and natural and physical resources"*¹.

The Bill transfers a number of functions and powers to the EPA through amendments to the Climate Change Response Act 2002 ("CCRA"), Hazardous Substances and New Organisms Act 1996 ("HSNO Act") and the Resource Management Act 1991 ("RMA").

The part of the Bill establishing the EPA will come into force the day after the Bill receives royal ascent. The parts of the Bill that provide for the transfer of functions and powers to the EPA through amendments to the enactments mentioned above will come into force on dates specified by Order in Council. The intention is for the functions under the HSNO Act and RMA to be transferred to the EPA on 1 July 2011, and the functions under the CCRA to be transferred on 30 September 2011².

Part 2 of the Bill establishes the EPA as a crown entity and sets out the EPA's functions³. The board of the EPA is to have no less than 6 and no more than 8 persons, one of whom must have knowledge and experience relating to the Treaty of Waitangi and Tikanga Maori⁴. Collectively, the board (appointed by the Minister for the Environment), is to have knowledge of and experience in relation to the functions of the EPA for example, New Zealand's environmental management system and the links between the economy environmental management⁵.

The objective of the EPA is to contribute to the efficient, effective, and transparent management of New Zealand's environment and natural and physical resources; and enables New Zealand to meet its international obligations⁶. The functions of the EPA are to:

- Process matters for proposals of national significance and applications called-in under the RMA. The Bill does equip the EPA with additional functions in the context of processing these matters which are detailed below. However, importantly the criteria, timeframes and processes for proposals of national significance and call ins are not changed by the Bill.
- Provide advice and information on the development and implementation of national environmental standards ("NES") developed under the RMA. We note that the Bill does not amend the process for establishing NES⁷. This means that the Ministry for the Environment remains responsible for the drafting and administration of the NES.
- Undertake all of the functions currently performed by the Environmental Risk Management Authority ("ERMA") under the HSNO Act;
- Undertake administration of the Emissions Trading Scheme under the CCRA;
- Upon request from the responsible Minister and in relation to its functions:

¹ Environmental Protection Authority Bill – Explanatory Note, page 1

² Environmental Protection Authority Bill, page 3

³ Clause 6-20

⁴ Clause 8

⁵ Clause 9

⁶ Clause 11

⁷ Sections 43-44A of the RMA

- Provide technical advice on environmental regulation making where EPA staff have the expertise;
- Provide secretarial and administrative assistance to committees and advisory bodies;
- Contribute to and cooperate with, international forums and carry out international obligations⁸.

The Bill also provides for the establishment of the Maori Advisory Committee⁹. The HSNO Act already provides for the establishment of a Maori Advisory Committee known as Nga Kaihau Tikanga Tiao. The Bill is therefore extending the functions and powers of the Maori Advisory Board to the RMA and CCRA. This committee is to provide advice and assistance to the EPA on matters relating to policy, process and decisions of the EPA under the RMA, CCRA and HSNO Act¹⁰. The advice and assistance must be given from the Maori perspective and come within the terms of reference of the committee which are to be set by the EPA¹¹.

Part 3 subpart 1 of the Bill provides for the disestablishment of the EPA as established under the RMA ("the former EPA") and specifies that all information, money, rights, liabilities and other matters relating to the former EPA is to be transferred to the new EPA¹². All references to the former EPA are to be read as a reference to the new EPA¹³. Similar provisions are contained in part 3 subpart 2 of the Bill in relation to the disestablishment of ERMA and Nga Kaihau Tikanga Tiao and the transfer of the powers and functions of these bodies to the EPA¹⁴. Similar provisions are also contained in part 3 subpart 4 of the Bill in relation to the transfer of functions of the Ministry for the Environment and Ministry of Economic Development under the CCRA to the EPA¹⁵.

Part 4 of the Bill amends the CCRA to enable the EPA to take over the functions of the chief executive responsible for the administration of the CCRA¹⁶. The EPA will take over, for example, the functions of receiving and collating data provided by ETS participants, administering allocations relating to industry and agriculture and approving the use of unique emissions, factors by participants.

Part 5 of the Bill amends the HSNO Act to replace ERMA with the EPA¹⁷. Part 6 of the Bill makes amendments to the RMA to enable the EPA to take over the functions of the former EPA established under the RMA¹⁸. These functions include:

- a. Receiving matters, for example, resource consent applications, requests for the preparation of regional plans and requests for plan changes lodged with the EPA under the RMA;
 - b. Recommending to the Minister for the Environment ("the Minister") whether the matters, such as resource consent applications, should be referred to a Board of Inquiry, the Environment Court, or the local authority and whether the matter should be notified;
 - c. Making decisions on applications for certificates of compliance for proposals or activities related to proposals of national significance;
 - d. Providing secretarial support services to Boards of Inquiry;
 - e. Performing any functions or duties delegated by the Minister;
 - f. Exercising other functions specified in the RMA¹⁹.
2. The Bill inserts an additional function so that the EPA is to advise and make recommendations to the Minister, on request, on whether a matter should be called in and whether it should be

⁸ Clause 12

⁹ Clause 17

¹⁰ Clause 18

¹¹ Ibid

¹² Clause 22 and 34

¹³ Clause 24

¹⁴ Clause 25 - 27

¹⁵ Clause 43-47

¹⁶ Clause 48 - 64

¹⁷ Clause 65-74

¹⁸ Clause 75-85

¹⁹ Section 42C of the RMA

processed by a Board of Inquiry or the Environment Court²⁰. The Bill also amends section 142 of the RMA so that in deciding whether a matter is, or is part of a proposal of national significance the Minister may have regard to any advice provided by the EPA, and must have regard to the recommendations of the EPA when deciding whether to call the matter in²¹.

3. Although the Minister has discretion on whether to hear from the EPA, these amendments provide the EPA with reasonably substantial powers because if requested to provide advice and recommendations, the EPA will be able to influence the decisions of the Minister.
4. Other additional functions inserted by the Bill include receiving documents from the local authority, providing secretarial support services to special tribunals appointed to hear and report on applications for water conservation orders and providing technical advice to the Minister on the development of NES²².
5. Once the Bill has passed its first reading in Parliament, the Bill will progress to a Select Committee. The date for the closing of submissions will then be set.

If you have any questions in relation to this article please contact Maree Baker:



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²⁰ Clause 83 inserting new section 144A into the RMA

²¹ Clause 82

²² Clause 80 amending section 42C of the RMA