

**Submission to:
Transport and Environment Select Committee
Parliament Buildings
Wellington
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**Resource Management
Amendment Bill 1999**

**Submission from:
New Zealand Manufacturers Federation Inc
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1. Introduction

- 1.1. The New Zealand Manufacturers Federation Inc ('ManFed') welcomes the present review of the Resource Management Act ('RMA') which has resulted in the Resource Management Amendment Bill 1999 (the 'Bill') and the opportunity to provide comment.
- 1.2. This submission is made on behalf of the New Zealand Manufacturers Federation. The Federation represents both regional associations and sector groups of manufacturers that support this submission.
- 1.3. ManFed submitted comments to the Ministry for the Environment on the "Proposals for Amendment to the Resource Management Act" (the 'Discussion Document')
- 1.4. The manufacturing sector is a significant contributor to the economy of New Zealand and represents approximately 18% of the GDP. Manufactured products comprise some 87% of New Zealand's exports (this includes those primary products exported in processed form). Manufactured goods total some \$51 billion and employment of approximately 262,000.
- 1.5. Thus any unnecessary impediment or compliance costs on the continuing operation, investment and development of the manufacturing sector will have a direct and significant impact on the economic wellbeing of New Zealand. For this reason, ManFed is very supportive of efforts to bring about greater efficiency to the RMA and its implementation.
- 1.6. ManFed has contributed to the Resource Management Business Forum submission and is encouraged by the unanimity between a wide and diverse range of resource user interests represented in that group. This group is responsible for something like 90% of New Zealand's GDP and is well placed to make informed comment on resource management issues. ManFed fully supports that group's submission.

2. The Need for Amendment

- 2.1. There is a very real and urgent need for a comprehensive review of the Act as the delays and costs that are associated with both inconsistent implementation and unnecessary controls and regulations have had and continue to have serious impacts on industry. New Zealand industry cannot afford the impacts of core legislation that places New Zealand manufacturers and exporters at a competitive disadvantage to their export competitors.
- 2.2. ManFed is very supportive of the concept behind the RMA of effects based legislation rather than prescription to ensure that resource utilisation is both environmentally sound and sustainable. However, there have been difficulties in the delivery of these objectives since the implementation of the Act in 1991. The difficulties tend not to arise from the Act itself but rather from the variable implementation of it by local government. The inconsistency of implementation and often the inability of decision makers to think "effects" instead of

"prescription" is a major part of the difficulties experienced by ManFed members when they encounter the RMA and its requirements.

- 2.3. ManFed is of the opinion that the recommendations contained within the Minister's Reference Group in September 1998 provided an excellent start point for amendment to the Act. The amendments proposed in that document if implemented in full would have contributed to much greater efficiency in processes and a reduction in compliance costs. This could have been achieved without reducing the desired outcomes of environmentally sound and sustainable management of natural and physical resources.
- 2.4. The Ministers Reference Group was comprised of experienced practitioners in resource management and the processes involved and had considered at length the difficulties that have been experienced with the RMA since its inception. The recommendations made were thus well founded in the practice of the RMA. The Discussion Document produced by the Ministry for the Environment did not carry through some of the significant recommendations proposed by the Reference Group and watered down the effect of others. The present Bill has been so further diluted from Reference Group's recommendations that it is doubtful that any advance in the workability and efficiency of the RMA will result from passing it in its present form.
- 2.5. The Bill does not fully address a number of key amendments that were proposed by the Reference Group. Some of the more significant of those issues are:
 - The changes to the definition of environment - the doubts whether there will be the ability to point to social and economic benefits of a proposal as a counter balance to other effects;
 - The introduction of contestability into the process, but in a manner that is unlikely to produce true contestability;
 - The strengthening of section 32, but the cost/benefit evaluation trivialised - thus the end result is likely to be no change;
 - The simplification of processes for national instruments, easing the way for centralised processes and retrospective actions on existing consents;
 - The introduction of heritage and archaeological matters; and
 - The omission of issues of compensation and consultation with Maori
- 2.6. ManFed has the concern that the RMA in its current form provides a barrier to development in New Zealand. The proposed amendments do not allay that concern. There is little doubt amongst industry that development opportunities are being lost because of the uncertainties in obtaining RMA consents to proceed. The risks involved mean that development and thus employment is either not proceeding or is being carried out off-shore, and either way New Zealand is the loser.
- 2.7. The opportunity to effect real efficiencies and cost reductions in the working of the RMA has been missed in this Bill.

3. Summary of Recommendations

- 3.1. **Clause 2.9 Definition of Environment** - Do not proceed with the amendments to the definition of environment to remove social and economic matters unless there is a corresponding ability inserted into section 104 to specifically allow for these matters to be taken into account as criteria in decision making.
- 3.2. **Clause 9 Limiting the Effect of a Proposed Plan** - Implement the amendment limiting the effect of any rule or policy until it is beyond challenge but do not undermine that by allowing a consent authority to vary the date by resolution.
- 3.3. **Clause 10 Commissioner Hearings** - Implement the ability for an applicant to require a hearing by commissioner/s, but not that of a submitter (unless with the consent of the applicant). ManFed has some concerns regarding the complexity of the process in the Bill and recommends the changes suggested in alternative 2 in the Proposals Document.
- 3.4. **Clause 11 Improving the Duty to Consider Alternatives, Assess Benefits and Costs** - Implement a more rigorous procedure than proposed. The opportunity to require proposed changes to be submitted to proper and transparent analysis should not be lost.
- 3.5. **Clause 11 Functions of Local Government** - Proceed with the proposed amendments.
- 3.6. **Clause 13 Contestability of Resource Consent Processing** - Proceed with the proposed amendments.
- 3.7. **Clauses 19, 20, and 21 National Policy Statements** - Do not implement.
- 3.8. **Clauses 25, 28 Matters to be Considered by Regional Council / Territorial Authority** - Do not implement.
- 3.9. **Clauses 17, 18 and 49 National Environmental Standards** - Do not implement.
- 3.10. **Clause 34 Rejecting Deficient Applications, Clause 37 Further Information Requests** - Proceed but only with the ability to reject "pro-forma" applications.
- 3.11. **Clause 37 Notification of Resource Consent Applications** - Implement.
- 3.12. **Section 39, (52) Direct Referral (Application) to the Environment Court** - Proceed with the amendment but without the requirement for the consent of the consent authority.
- 3.13. **Clauses 2, 3, 4, 5, 7, 8, 25, 28, 98, 108, 109, 110, 111, 112, 113, and 114 Heritage and Archaeological Matters** - Do not proceed with any of the proposed amendments until a comprehensive review has been carried out.

4. Specific Comment

4.1. Clause 2.9 Definition of Environment

- 4.1.1. ManFed supports the intention behind the proposed amendment to Section 2 providing for the removal of social and economic matters from the definition of environment. The limitation on councils in using the RMA to pursue social and economic planning objectives beyond the scope of an environmental statute is supported. However, this must not negate the ability to include these matters in the balancing of decisions under the Act when these considerations are relevant.
- 4.1.2. There has to be the ability to point to positive social and economic effects arising from development as a balance to any potential adverse effects. These matters should be required to be taken into account in the preparation of both regional and district plans but particularly in resource consent considerations.
- 4.1.3. Further, it is unclear why, if social and economic matters are to be excluded from the definition of environment that health and cultural values should remain - the arguments to remove these matters are the same as for social and economic ones.
- 4.1.4. ManFed does not support the suggestion that sufficient reliance can be placed on section 5 (2) of the RMA to provide for consideration of these matters. A change to section 104(3) should be made by inserting social and economic benefits into the assessment criteria for discretionary activities.
- 4.1.5. Thus, ManFed supports the amendment to the definition but only with the corresponding change to section 104.

4.2. Clause 9 Limiting the Effect of a Proposed Plan

- 4.2.1. ManFed supports the intention of the new section 19 to limit the effect of any rule until the proposed plan is beyond challenge in the interests of greater certainty in the implementation of plans and rules. We are of the opinion that the disadvantage that has been expressed - that of precipitate action to avoid the effects of rules that are not yet in force, should be dealt with by compensation provisions within the Act.
- 4.2.2. ManFed is strongly opposed to the new section 20 giving the local authority the ability to give effect to a rule or change in a rule at an earlier date by resolution. This section completely undermines the intention of section 19.

4.3. Clause 10 Commissioner Hearings

- 4.3.1. ManFed agrees that there is a perception that hearings by elected councillors may not be "objective and professional, decision making fora". There is the inherent difficulty that those with the responsibility for preparing district and regional plans may, albeit subconsciously, have an established mindset which precludes objectivity in assessing applications. Thus, the ability to have Commissioner hearings is strongly supported. The caveat

added is that any proposals for Commissioner hearings should not lead to greater costs for applicants.

4.3.2. ManFed does not support the ability of submitters to require a hearing by a hearings commissioner. The choice should be that of the applicant only. The consent authority still has, of course, the ability to provide for commissioner hearings under section 34(3).

4.3.3. ManFed is of the opinion that the amendment proposed in Clause 10 is too complex and that the suggested Alternative 2 in the Proposals Document (section 101A) should be adopted with the following change - proposed section 101A (1) should be amended to read *"....under section 101(3), the applicant may require in writing to the consent authority that the hearing..."* or similar.

4.4. Clause 11 Improving the Duty to Consider Alternatives, Assess Benefits and Costs

4.4.1. ManFed strongly supports the intention to ensure that the analytical rigour that was originally intended in section 32 is in fact applied. There is a need to improve practice in the preparation of plans and policy statements when considering the imposition of rules and regulations. The problem remains that there is little pressure on councils to actually implement improved practices.

4.4.2. We support the intention to impose increased rigour on consent authorities by the proposed changes. However, we are not confident that what is proposed will meet that intention.

4.4.3. If an evaluation is required to be undertaken before making a decision, why shouldn't that evaluation be made available, instead of a further report stating that the evaluation has been done and reasons for satisfaction.

4.4.4. The introduction of the precautionary principle is of concern. The present section 32 and the Discussion Document proposal required no action to be taken unless the stated objectives would be met. The proposed section 32(3)(b) introduces the precautionary principle which will provide an avenue for an authority to revert to unsubstantiated regulation. We recognise that there may be instances where the application of the precautionary principle may be appropriate but the process should be explicit and transparent.

4.4.5. We recognise the uncertainty that might arise if the prohibition on challenges to provisions after a plan has been made operative were to be removed. However, if such challenges were to be allowed there would be further pressure on councils to apply the intention of the requirements of section 32.

4.4.6. ManFed supports the wording proposed in the Discussion Document.

4.5. Clause 11 Functions of Local Government

4.5.1. ManFed supports the intention to reduce overlap in functions contained within the new sections 30 and 31. The overlap in functions of local

government has long been an issue raised in ManFed meetings discussing the difficulties (and virtues) associated with the implementation of the RMA.

- 4.5.2. As a point of policy, there should be no circumstance where an applicant is required to obtain consent for the same activity from both a regional and a district council. There must be a mandatory requirement on councils where there is overlap of responsibilities to determine who has jurisdiction. There is the power in the Act to allow for the transfer of functions but few councils have used it.

4.6. Clause 13 Contestability of Resource Consent Processing

- 4.6.1. In the interests of more efficient consent processing at least cost to the applicant, ManFed supports the concept of contestability in resource consent processing. The separation of consent processing from the preparation of plans and rules should remove the potential for concern that consent reports could be slanted towards a defence of those plans and rules.
- 4.6.2. Contestability will also place greater pressure on local authorities to produce clearer and more precise plans.
- 4.6.3. However, it is critical, in order to implement true Contestability, that an applicant should retain the right to require the use of an approved consent processor and to be able to negotiate the costs that may have to be met. The proposed Bill does not allow for this.
- 4.6.4. We recognise the concern regarding notification of applications, and we would support the development of more explicit guidelines on whether to notify or not notify an application.

4.7. Clauses 19, 20, and 21 National Policy Statements

- 4.7.1. ManFed does not support any of the changes proposed in Clauses 19, 20, and 21.
- 4.7.2. As noted in both the Minister's Reference Group report and the discussion document, the process for the development of National Policy Statements is lengthy and cumbersome. It is for these reasons that it has been used only for the NZ Coastal Policy Statement, and then only because it was mandatory. We agree, but then other processes under the RMA suffer from the same problem, for example plan, policy preparation and processing and complex consent applications.
- 4.7.3. ManFed does not support the rationale that justifies changes being made to the National Policy Statement process to make it more workable unless similar changes are made to other processes under the RMA.

4.8. Clauses 17, 18 and 49 National Environmental Standards

- 4.8.1. The mandatory imposition of monitoring methodologies and standards is opposed.

4.8.2. The potential for retrospective application of National Environmental Standards takes no account of any size or site specific factors that may be appropriate. A retrospective application of an NES may result in inconsistencies between consent conditions and the NES which could give rise to compensation issues.

4.9. Clauses 25, 28 Matters to be Considered by Regional Council / Territorial Authority

4.9.1. ManFed does not accept the concept of regional councils and territorial authorities having to "*take into account any planning document recognised by an iwi authority....*". It is reasonable to expect authorities to have regard to issues that may be raised, but to require account to be taken of any "unspecified" planning document that may be recognised by an iwi authority is unreasonable. This amendment is opposed.

4.10. Clause 34 Rejecting Deficient Applications, Clause 37 Further Information Requests

4.10.1. ManFed supports the intention of these proposals, however we consider that a consent authority should be limited to the ability to reject pro-forma applications only.

4.11. Clause 37 Notification of Resource Consent Applications

4.11.1. A limited notification procedure is required to limit the instances where applicants have been forced to go through lengthy and costly full public processes simply because one effected person has declined to give consent. ManFed supports the proposed amendments.

4.11.2. As a point of clarification the determination of whether or not there are minor effects or whether persons are adversely effected in the proposed sections 94 and 94A should be based on the degree of **additional** adverse effects beyond those that would arise from permitted activities.

4.12. Section 39, (52) Direct Referral (Application) to the Environment Court

4.12.1. ManFed supports the concept of being able to refer certain applications directly to the Environment Court. For consents where it is apparent that an appeal is likely, the savings in costs and time in having only the one hearing could be significant.

4.12.2. We see no apparent reason why the timing of entry into the direct referral process is important and would support a rewording that allows for direct referral at any time before the hearing.

4.12.3. ManFed would suggest that the criteria for direct application as proposed in the new section 150A(3) should include a consideration of factors such as;

- the likelihood of an appeal occurring;
- the amount of costs and delays that would be saved; and

- the significance of the proposal from either a public or a private perspective.

4.12.4. With respect to new section 92(3), the specified 10 working days for the receipt of any commissioned report before a hearing may be too short for a proper consideration of that report for a reasonably complex application. We would recommend an extension of that time to 20 working days.

4.12.5. The proposed new section 92A dealing with the commissioning of reports on applications is strongly supported.

4.13. Clause 43 Bonds as Conditions on Consents

4.13.1. ManFed is opposed to this proposed new section 108A as it stands. We have a concern regarding the open ended options available to councils to impose bonds for the ongoing monitoring, remedying and maintenance work required to address long term effects. Any long-term effects that a council proposes to require a bond against should be limited to exceptional circumstances specifically identified at the time of imposing the bond as a condition. Any action proposed by a council should be subject to the processes set out in the Act.

4.14. Clauses 2, 3, 4, 5, 7, 8, 25, 28, 98, 108, 109, 110, 111, 112, 113, and 114 Heritage and Archaeological Matters

4.14.1. The proposals contained within all these clauses have been promulgated with insufficient consultation as to the financial and administrative requirements of implementation.

4.14.2. The concept of public good at private expense is raised in that there is no consideration of who is to pay for the protection of historic sites and heritage values.

4.14.3. The wording of the definitions of "historic heritage" and archaeological sites" are simply too loose and will allow too wide a range of interpretation.

4.14.4. Manfed strongly recommends that there should be a comprehensive and transparent review of all the matters effecting these issues prior to any of the proposed amendments being enacted.

5. Other Matters Not Included in the Bill

5.1. Compensation

- 5.1.1. This matter was raised by the Minister's Reference Group but was not included in the Discussion Document and has not appeared in the Bill. The matter remains an issue of considerable concern. ManFed considers that the issue of compensation should have been included in the present Bill. While recognising that the issue is complex, and that there are legal and policy issues in arriving at a fair and equitable process in compensating injuriously affected parties, we believe that that should not have precluded a review of the compensation provisions of the Act.
- 5.1.2. ManFed believes that 'public good' outcomes should not be pursued at private individual expense. The continuing refusal to address this issue in the RMA legislation process only reinforces the belief that there is an acceptance that private rights can be alienated in the interests of the 'public good'. ManFed does not accept that the consignment of the compensation issue to the "too hard basket" is appropriate. Where benefits in the public interest are placed ahead of the rights of the private individual then fair and equitable compensation should be available.
- 5.1.3. ManFed supports the conclusion and recommendations contained in the Appendix to the Reference Group's report. Further, we would support a specific review of the whole question of compensation issues under the RMA. In our view, the Minister should identify a process and timetable for this as soon as possible.
- 5.1.4. As an interim measure, we recommend that the Committee pursue an immediate change to Section 85 to allow any owner or occupier to make an application, at any time, for an order requiring plan provisions to be altered or the land to be taken where planning controls made in the public interest would impose an unreasonable burden on the owner or occupier and where compensation or some other equitable offset is not proposed.

5.2. Consultation with Maori

- 5.2.1. In the canvassing of opinion among manufacturers, difficulties in consulting with Iwi were identified. At issue is not the need to consult and meet Treaty of Waitangi requirements but rather ascertaining who is the appropriate person or body to consult with and to have certainty in that consultation.
- 5.2.2. It is the responsibility of the consent authority to determine this issue and it is not, as has happened in some cases, for an applicant to determine. An applicant may not be sufficiently aware of appropriate persons or bodies but a consent authority certainly should. There is a need for better guidance on this matter for potential applicants.
- 5.2.3. We submit that the Act be amended to explicitly provide for this responsibility to be added to those of consent authorities.

6. Summary

- 6.1. ManFed is concerned that the Bill is not the comprehensive review of the Resource Management Act that we understood was being undertaken through the long consultation process that has occurred.
- 6.2. The Minister's Reference Group produced a valuable starting point which, if the recommendations had been implemented, would have produced the desired outcomes of more effective and cost efficient environmental legislation without any detraction in the environmentally sound management of New Zealand's natural and physical resources.
- 6.3. Unfortunately, the amendments proposed in the Bill do not address a number of the issues raised and has diluted others to the point where it can not be said to be a comprehensive review of the workings and processes of the Act.
- 6.4. The New Zealand Manufacturers Federation wishes to be heard in support of this submission.