



3 April 2009

Pavan Sharma
Secretary,
Local Government and Environment Select Committee
Parliament Buildings,
WELLINGTON

Dear Mr Sharma

I enclose 2 copies of the submission from the Public Health Association of New Zealand on the Resource Management (Simplifying and Streamlining) Amendment Bill.

The Public Health Association would like to make an oral submission when the Committee is considering submissions.

Yours sincerely

Dr GM Keating
National Executive Officer



Submission

to the Local Government and Environment Committee

on the Resource Management (Simplifying and Streamlining)

Amendment Bill

INTRODUCTION

The Public Health Association of New Zealand (PHA) is a voluntary association which provides a major forum for the exchange of information and stimulation of debate about public health in New Zealand. Membership of PHA is open to individuals interested in public health. Members belong to the public, private and voluntary sectors. In addition to membership fees, donations and other earnings, the PHA has a contract with the Ministry of Health to encourage and facilitate informed debate on key public health issues. The PHA is a member of the World Federation of Public Health Associations.

Public health is defined as the improvement of the health of the whole population *'through the organised efforts of society'* (Acheson, 1988).

1.0 EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

1. PHA acknowledges that the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (the Bill) is the initial phase of proposed amendments to the Resource Management Act 1991 (the Act.)
2. The sustainable management of resources is crucial to human health and wellbeing. A sustainable and safe environment is crucial for the most basic of health needs – safe water and air, adequate and nutritious food, safe and adequate shelter now and into the future. PHA members and regional branches regularly engage with the Act.
3. PHA supports the Bill's general objectives in reducing delays, costs and uncertainty associated with the Act's current processes. But these desirable objectives must not be achieved at the cost of excluding essential, legitimate public health concerns from decision-making processes.
4. Streamlining the Act by deliberately restricting the ability of the wider public to participate in the resource management process is contrary to current local and central government commitments to community engagement, as supported in statute and policy.

5. The erosion of public participation has a disproportionate impact upon Maori interests. The Bill will make it more difficult for Maori to participate in, and challenge, post-consultative decisions, which is contrary to the principles of the treaty of Waitangi of partnership, participation and protection. These principles support the reduction of inequalities.
6. PHA is concerned that the Bill transfers some resource management processes currently reserved for local government to other agencies including the Environment Court (EC), Boards of Inquiry¹ and proposed Environmental Protection Agency (EPA). The PHA cannot support a process that is likely to reduce the accountability to local communities by an agency whose decisions made under the Act affects local communities.
7. The resource management system can be strengthened through improved education of its key users and development of comprehensive and clear national and regional standards. With increased transparency, full public participation and local government responsibility in the resource management process can be retained.
8. There is still uncertainty in the formation and operation of the EPA, which limits PHA's capacity to make informed comments. In the absence of further detail, the need for public health input into the EPA decision making process is highly recommended.
9. PHA would like to see a mandatory period retained for the review of District Plans by deleting Clause 56 of the Bill. This would allow Territorial Authorities to respond to emerging health issues more effectively.
10. PHA recommends that the Section 92 request for further information (and related provisions) of the Act be retained, by deleting Clause 64 of the Bill, and amending related clauses.

2.0 HEALTH AND THE RESOURCE MANAGEMENT ACT

11. It is impossible to overstate the significance of the Act to human health. At the time of the formation of the Resource Management Act a range of long-standing protections for health (such as controls on discharges to air) were moved from the Health Act 1956 to the RMA. It is quite unacceptable to make any changes to the RMA that will reduce in any way the ability to protect the environment for human health. A failure to adequately consider health implications in the resource management process will result in the re-emergence of totally preventable illness and premature deaths. A further minor implication is the costs for individuals, and opportunity costs on District Health Boards that must divert resources from waiting-list surgery to treat these preventable illnesses.
12. PHA members and regional branches regularly engage with the Act over a broad range of resource management issues. In addition to use of the Act by the PHA,

¹ Clause 42 limits the liability of Board of Inquiry member

many PHA members in their professional capacity as public health practitioners contribute their scientific understanding of the interactions between the environment and human health to considerations under the Act of land use consents, contaminated land, discharges to land, air and water, noise and other matters. Public health practitioners ensure that resource consent applicants comply with health standards, provide evidence-based information to aid in the approval process, and ensures effects are monitored to minimise any potential health risks to the public.

13. The PHA and public health practitioners also provide submissions on the plans and policy statements of territorial and regional authorities as they relate to public health. Local government, in its role as a place-shaper and service provider/enabler, has a far greater influence on preventing ill health and promoting community wellbeing than any other agency. Relationships between public health agencies and practitioners with local councils and the resource management processes of the Act are fundamental to influencing and addressing public health matters at the local government level.

3.0 GENERAL COMMENTS ON THE BILL

14. The purpose of the Act, as listed in Part 2 Purpose and Principles, is to promote the sustainable management of resources. Any proposed changes to the Act's processes must be consistent with this aim.
15. Sustainable management under Section 5(2) of the Act means “managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, cultural wellbeing and **for their health and safety...**”
16. Section 2 of the Act acknowledges that the environment includes people and communities. Therefore when resource management decisions are made, consideration of the potential effects of activities on the environment should also include the consequences on people's health, safety and general well being.
17. Over time, the Act's various processes have become increasingly centralised, with local government looking for more certainty in outcomes. This has reduced flexibility as the process becomes clogged up with local government requirements and extra costs that the Act did not originally envisage.

Public Participation

18. The Bill openly limits the general public's ability to participate in resource management matters, not only to streamline processes under the Act, but to stop trade competitors and vexatious parties from exploiting these processes. The provisions of the Bill that increase filing fees and allow security for costs are aimed at discouraging the abuse and exploitation of the resource management process rather than streamlining the Act in an effective manner.

19. The current Act already has the ability to deter vexatious parties from making submissions with little merit². An Environment Court (EC) judge or local authority can strike out court cases, hearing submissions and policy statement or plan change requests on the grounds that they are frivolous or vexatious. Although the Bill's cost measures might stop vexatious parties from ever entering the resource management process, they will also discourage genuine submitters. The focus on trade competitor behaviour will also threaten parties with legitimate concerns that are, or may be, considered competitors.
20. Restricting public participation in this manner is an approach that challenges local and central government commitments to improving community engagement and communication. It also conflicts with central government's role to safeguard individual rights in a participatory democracy. Local government has statutory³ and policy-based obligations to properly consult with its constituents.
21. Increasing the EC filing fee for lodging appeals to \$500, and the new security requirement for costs⁴ following Clause 133 of the Bill, is a concern since it discourages all submitters, legitimate and illicit, from utilising the Act.
22. PHA does not support the increased filing fee and security for cost provisions of the Bill as they fail to provide a proper balance of interests. They succeed in broadly restricting access to the Act through cost,⁵ rather than streamlining the resource management process to make it more efficient and effective.

Resource Consent Applications

23. Streamlining decision-making processes by allowing resource consent applications to go directly to the EC under Clause 60 of the Bill creates responsibility risks. Any local authority that is reluctant to make a decision on a consent issue can avoid accountability by leaving it to the applicant and EC to resolve. Applications through the EC would also add further cost to the submission of the applicant or interested party to meet formality requirements.
24. PHA would like to express concern that public notification will only be required under Clause 68 of the Bill if the effects are "beyond the immediate environment" and more than "minor." This could potentially lead to a gradual and cumulative deterioration of the public's physical environment, with negative health effects. Variation in judgement of "the boundaries of immediate environment" is also problematic and the likely subject of further litigation.
25. Clause 131 of the Bill amends Section 274 of the Act to make the Attorney General the only party that can represent the public interest. The PHA is

² See Section 41C(7)(a) Directions at hearings, Section 279(4)(a) Powers of Environment Judge, and Schedule 1 Clause 25(4)(a) Local Authority to consider request of Act

³ Local Government Act 2002

⁴ Clause 133 repeals s284A of Act barring security for costs

⁵ "Costing out" potential participants from the resource management process conflicts with the principles of environmental justice and the equitable distribution of environmental risk. All groups are entitled to equal protection from environmental risk or harm irrespective of race, income, class or socioeconomic status.

concerned that this may prevent organisations such as the PHA from becoming a section 274 party to proceedings unless it submits on the original application.

26. Although many public health professionals are employed or designated by a statutory health body⁶ and therefore would be entitled to submit under Section 274(1)(d) of the proposed Act⁷ this seems to be unnecessarily limiting.

Local Government Plans and Policy Statements

27. Planning documents have also become increasingly important in local government, as they are required to give effect to a broad range of matters following regional and national policies and policy statements. Clause 136 of the Bill restricts appeals on plans to questions of law only, except with leave of the EC following Clause 132 of the Bill. This creates a potential risk to the public if health considerations are not properly addressed in the first instance. The lack of opportunity to revisit plans when they have inadequately considered health issues will lead to poor quality plans and policy statements.
28. This risk is aggravated by Clause 148 of the Bill and the removal of making further submissions following Schedule 1 of the Act⁸. The process of calling for and summarising further submissions gives all interested parties access to unexpected issues. When combined with Clause 136, public participation is again compromised to streamline the planning process. The public is left less informed and less able to challenge plans or policy statements.

Impact upon Maori

29. The Bill has a direct impact upon public participation and the ability of the community to become involved in resource management processes. Within the wider population, the provisions of the Bill will have a disproportionate impact upon Maori interests. Local Maori and Iwi groups are heavily involved in resource management at the local government level, particularly in consultative processes as supported by Part 2 of the Act. The Bill will make it more difficult for Maori to participate in and challenge post-consultative decisions, which is contrary to the principles of partnership, participation and protection that support the reduction of inequalities.
30. If minority, and often marginalised, community groups such as the elderly, youth and culturally and sexually diverse sections are excluded from the resource management process, the utilisation of Treaty of Waitangi models of maintaining effective working relationships, as well as government aspirations of effective community engagement, are further undermined.

⁶ Under the Health Act 1956 and NZ Public Health & Disability Act 2000

⁷ A person who has an interest in the proceedings that is greater than the interest that the general public has.

⁸ Schedule 1 Preparation and change of policy statements and plans by local authorities

31. Following the principles of environmental justice⁹, all groups in society are entitled to equal access to a clean environment and protection from environmental risk or harm irrespective of race, income, class or any other socioeconomic status related factor. In relation to the Act, these groups should also have access to, and be able to, fully participate in the processes that impact upon environmental risk.

Other Issues

32. PHA supports the explicit inclusion of National Environmental Standards as a matter for consideration throughout the Bill. The development, discussion and adoption of a comprehensive set of National Environmental Standards and regional rules and plans, which are integrated and escalated in detail, are essential. They would provide appropriate benchmarks and more certainty in the operation of the amended Act as they filter down through to local government and the resource consent application stage.
33. PHA recommends that an intensive period of seminars on the Act's amendments be funded and timed for its introduction. These seminars are to be targeted towards councillors, officers and other resource management officials. Educating the key users and administrators of the Act may encourage a more consistent and balanced approach to resource management processes.

4.0 SPECIFIC COMMENTS ON THE BILL

Clause 35 – New Part 4A inserted

34. The Environmental Protection Agency (EPA) is established in Clause 35 of the Bill. As the EPA fast-tracks proposals of national significance¹⁰ there needs to be clear public health input in its decision making. It is acknowledged that the streamlined process reduces opportunities for public participation, and limits the ability for EPA decisions to be appealed. A requirement to consider health issues becomes even more important in this situation - so the health and wellbeing of the population is not put at risk.
35. The aim to reduce the time it takes to make decisions on proposals of national significance is commendable, as long as public health considerations are maintained. In its current form, there does not seem to be an explicit way for public health professionals to provide any specialist public health input into proposals of national significance.

⁹ J Pearce, S Kingham "Environmental Inequalities in New Zealand – A national study of air pollution and environmental justice", *Geoforums* Vol 39 No 2 March 2008 at 980-993

¹⁰ Clause 95 national significance includes network utility operation proposed to or extends more than one region

36. Public health services based in District Health Boards have fostered relationships with local government at all levels around the country to ensure health implications are properly considered. There is need for clarification on possible interaction with the EPA, as well as the relationship and boundaries between local government and the EPA. Uncertainty around the precise role and jurisdiction¹¹ of the EPA, its link to the Ministry for the Environment, and how public health concerns can be raised, should be resolved prior to the EPA's establishment.

Clause 56 - Review of policy statements and plans

37. PHA agrees that timely and cost effective development is desirable when updating planning documents. It encourages rapid responses so that local government decisions are kept relevant in a constantly changing environment. Removing the mandatory obligation for Territorial Authorities to review District Plans every ten years in Clause 56 of the Bill seems contrary to this objective. Planning documents should be dynamic and forward looking and a statutory requirement to continually update them in a set period encourages this.

38. Although the Minister can direct local government to review a plan (Clause 19) and Clause 56 of the Bill contains express provision to review "if the plan no longer assists the authority to carry out its functions in order to achieve the purpose of the Act", a definitive timeline encourages more pro-active involvement. It also reduces the likely consequence of interested parties 'forcing' regular reviews by submitting plan change requests more frequently. Any opportunity for local government to consistently communicate and engage with their stakeholders and communities should also be supported.

39. PHA recommends Clause 56 be deleted from the Bill, and the current wording of section 79(2) of the Act be retained. If Clause 56 is to be enacted in its present form, PHA suggest that those local government planning documents that have not been reviewed recently be re-examined (not re-written) before the Bill takes effect. This would enable District Plans to be current and up to date before Territorial Authorities are given the discretion to review them again.

40. Regular plan reviews allow local government to deal with emerging issues effectively. For example an inter-agency air quality panel¹² identified the location of Early Childhood Education Centres (ECEC) in close proximity to major roads as a hazardous environment for children¹³. A related issue with health implications is the placement of public or private schools near major and arterial roads.

¹¹ Clause 21(2) Minister can delegate powers s144, 145 and 147 – proposals national significance to EPA

¹² Membership included the Auckland Regional Council, University of Auckland, other Government agencies and private/commercial sector representatives

¹³ Air pollution caused by motor vehicle emissions has potentially serious health implications for the young, such as increased risk of asthma and respiratory infections. Vehicle emissions reduce lung function in children, and long-term exposure may cause reductions in function that persist into adulthood, and add further cost to the health sector. Children are more susceptible to the effects of air pollution than adults, as lung function passes through critical developmental stages in early childhood. Children in ECEC's also spend significant time outdoors, undertaking activities with high levels of physical exertion. Concentrations of many pollutants from vehicle emissions are greatly elevated in locations close to major roadways.

41. The issue of air quality for children is one where the public health understanding of risks has changed over the recent past, and there is now a growing body of evidence on the lifelong effects of poor air quality in early childhood.
42. As a result, public health professionals across the country are now recommending that local Councils use all planning instruments at their disposal to ensure ECECs and schools are located away from areas with the poorest air quality, such as locations on, or near, major roads. Regular reviews help local government planning to retain its vitality and shape as regional and territorial authorities can incorporate current concerns into their plans in a timely fashion.

Clause 64 – New Section 92 substituted

43. Clause 64 of the Bill substitutes the Section 92 request for further information provision of the Act, and restricts the local authority's ability to act on insufficient information. This is likely to result in drawing out the consent process rather than streamlining it. The proposed change is likely to lead to more appeals as local authorities are forced to decline resource consent applications in the absence of important information. If insufficient data is supplied by an applicant from the beginning - to show that health risks have been assessed, monitored and addressed - then Crown public health professionals are also likely to be drawn into appeals more frequently than is currently the case. The failure of an applicant to provide sufficient information at the outset to assess public health or local authority concerns already draws out the resource consent application process unnecessarily.
44. PHA recommends that Clause 64 (and other relevant provisions as they relate to further information requests) be deleted, and the current Act's provisions retained.

5.0 CONCLUSION

45. PHA reasserts that the goal of making the Act a more efficient, streamlined process is desirable. Establishing a new body in the EPA, deliberately restricting public participation and transferring local government responsibility may achieve these goals, but at the unacceptable expense of proper consideration of human health implications.
46. With fewer potential opportunities to participate fully in resource management processes and decisions, whether due to procedure changes or shifts in accountability, it is vital that health considerations are always included in the final process.
47. PHA encourages full public participation in the resource management process and does not see restricting access as an effective or desirable means of streamlining the Act.

48. The resource management system can be strengthened through improved education of its main users, and development of comprehensive and clear national and regional standards. With increased transparency, full public participation and local government responsibility in the resource management process can be retained.

Thank you for the opportunity to make this submission.