Submission by

The Employers and Manufacturers Association (EMA)

on the

Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

August 2021

About the EMA

The EMA has a membership of more than 7500 businesses, from Taupo north to Kaitaia, employing around 350,000 New Zealanders.

The EMA provides its members with employment relations advice and legal services from industry specialists, an on-site training centre offering more than 600 courses, tailored in-the-workplace learning and a wide variety of conferences and events to help businesses grow.

The EMA also advocates on behalf of its members to bring changes in areas that can make a real difference to the day-to-day operations of our members including RMA reform, infrastructure development, employment law, skills and education, health and safety and export growth.

The EMA is also part of the BusinessNZ network.

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INTRODUCTION

As one of the organisations that has driven the advocacy for change of the current Resource Management system the EMA welcomes the opportunity to comment on the recently released Exposure Draft of the Natural and Built Environments Bill

The EMA has a long-held view that the RMA has acted as a hindrance to economic growth, especially in large-scale infrastructure and housing projects, while it has also failed to provide consistent environmental protection.

The RMA has long been regarded as slow and cumbersome with uncertain outcomes.

The uncertain outcomes for business are exacerbated by often sub optimal outcomes for the environment. The Environmental Defence Society's work – commissioned by the EMA, InfrastructureNZ and Property Council NZ - demonstrated these poor results for the environment.
Subsequent EDS work – again co-funded by the above organisations – encouraged the current government to embark on the reform process.

The constant stream of legislative changes since the RMA's initial passage into law have also contributed to confusion and delays in the consent process and made the existing system complex and unwieldy.

The government's review, chaired by former Appeal Court Judge the Hon Tony Randerson, and the subsequent report released in mid-2020 called for wide-ranging reforms to the RMA, including replacing it with three separate Acts:

1. **Natural and Built Environments Act (NBA)**, providing for land use and environmental regulation (this will be the primary replacement for the RMA).
2. **Strategic Planning Act (SPA)**, requiring the development of long-term regional spatial strategies to co-ordinate and integrate decisions made under relevant legislation.
3. **Climate Change Adaptation Act (CAA)**, addressing complex issues associated with managed retreat and the funding and financing of adaptation.

The EMA supports the intent of many of the proposed changes outlined in the new bill, but implementation remains a concern.
There is a degree of complexity in the proposed new bill that could simply lead to replacing one form of complexity and uncertainty with another, a conclusion supported by the Regulatory Impact Statement (RIS).

This Bill is also the first of three to be introduced over the next year making it difficult to understand the complexities and coherency behind making three separate Bills work as a singular, overall framework.

The EMA also generally supports the comments and recommendations made by our network partner BusinessNZ.

The EMA would also request an opportunity to appear before the Select Committee.

THE NATURAL AND BUILT ENVIRONMENTS BILL

In general, our main concerns with the Exposure Draft of the Bill centre on the likely complexities of interaction between this and the other two bills and the potential for legal conflict that creates.

Our other main concern is the hierarchy within the exposure draft that clearly puts the emphasis on environmental outcomes ahead of all others, especially development. One of the goals of the reforms was to make it easier and faster to consent major infrastructure needs to support growth and economic development.

The current clause five has an overriding emphasis on environmental outcomes to the potential detriment of wider economic development. This is likely to result in more litigation rather than less, given the clause eight requirement to promote a long list of environmental outcomes. Limits prescribed in the National Planning Framework need to have flexibility to meet the trade-offs that local communities may be prepared to make. The benefits of mandatory national direction – certainty for example - might come at the expense of flexibility at the local level such as a need to address pressing housing or infrastructure issues.

If Te Oranga o te Taiao is to be written into the legislation as the tool to give effect the values of Te Tiriti and te ao Maori then it needs to be clearly defined and its meaning understood in the context of development. Otherwise, the concept risks becoming the “amenity value” of the old RMA – a concept never properly defined that led to constant reinterpretation and swathes of legal action.

The following sets out specific comments on various paragraphs within the Bill’s Exposure Draft.

Paragraph 33: The mandatory requirement for the Minister to set environmental limits could be problematic in disrupting existing use rights – an issue the Bill is silent on addressing.

It is also potentially problematic in addressing existing or known regional variations and setting a single standard across the country does come with issues, particularly around implementation and enforcement.

For example, the hastily drafted National Freshwater Standard was pushed through with minimal consultation – about 10 days for submissions - with the wider community and resulted

in a nationally implemented standard with too broad a definition. This caused major delays in the earthmoving season for quarrying – shutting down planned expansion – and then spilled over into issues for the housing and roading sectors.

If the Minister is to set these standards, then there should be an agreed process around agreeing these standards and consultation with stakeholders.

Paragraph 35: The issues around the large number of recommended outcomes in the Randerson Report and the exposure draft have been well-canvassed and recognised by the authors of the report. There are too many outcomes that may in some cases be directly at odds with each other as housing and construction of infrastructure outcomes are almost certain to be at odds with environmental protection outcomes.

Paragraph 38: Rather than curtail amenity values just do away with this problematic phrase. How do you define unreasonable costs on development and resource use?

Strategic Planning Act: While largely supportive of the goals of the Act a general comment on its implementation is that unless the many and varied local authorities have buy-in and incentives to support growth, the risks are high that current resistance to the Three Waters reform by local bodies will be repeated when it comes to introducing this Act.

Paragraph 60: As noted by BusinessNZ effective adaptation and risk management responses to climate change should include appropriate recognition and reparation for loss of existing property rights.

Paragraphs 66, 67, 68: The EMA agrees that good implementation is critical to the success of the new legislation, but the legislation and the Randerson Report are both silent on implementation and governance. One of the issues of the current RMA system is its varying interpretations by too many local authorities. The current plan is to have the new legislation in place by 2023. Paragraph 68 highlights the culture change, capacity and capabilities issues that currently dog implementation of the Act. It's hard to see two being an achievable timeframe to complete the legislation or its implantation. It took nearly 30 years to recognise and the need to change the old Act. What's the rush to the new one? The danger is we'll repeat some of the previous mistakes.

Paragraph 97: Where Te Oranga o te Taiao sits in the hierarchy/priorities in the Act will be critical to the success of the new legislation. Our concern is that, like "amenity value," in the current RMA, there is a risk of the principles being used as a catch-all to stop development.

Paragraph 114: As previously noted this long list of outcomes includes several that will directly contradict or be in conflict with each other.

Paragraphs 121, 124: While generally supportive of National Direction that support comes with the caution of not repeating the haste and unintended consequences of the recent National Freshwater Standards. The development of national directions must take the time to work with

stakeholders and submitters to design and workable standard that attains its environmental protection goals while ensuring workable outcomes for growth and development where appropriate.

Paragraph 138: Who determines the make-up of those planning committees under the NPF. For example, business appears to be excluded from the current list of stakeholders, but business has a valuable contribution to make in determining where industrial and light industrial districts might be best suited by location in spatial plans.

Is it necessary to have the Minister of Conservation represented on these committees and why not then include other Ministers such as Transport or Infrastructure?

Is there a right of appeal?

Also setting up the NPF by regulation runs the risk of shutting out key stakeholders at regional and local level, a criticism aimed at the Auckland Unitary Plan process. Reducing the opportunities for problematic stakeholders to intervene through the consent process is a desirable outcome but should be balanced against genuine, added-value stakeholder engagement.

Implementation of the NPF is also unclear. Will that be left to local authorities or is there a national oversight.

Paragraph 139: Allowing qualitative setting of environmental limits opens the door to much legal wrangling event with the reduction on weighting to amenity value.

Paragraph 161: The EMA disagrees with the precautionary approach.

Natural and built environment plans: Moving from around 100 plans down to 14 regional plans is supported, particularly if that leads to greater consistency of application and implementation across regions.

One of our members routinely deals with seven councils within the Waikato and has a different set of rules applied to his holiday home construction business in each jurisdiction. Many current problems with the RMA are the consequence of varying council interpretations, a high degree of risk avoidance and variable resourcing and expertise.

However, consistency might not be the answer if what is appropriate for one region is not appropriate for others – can there be regional variations and trade-offs to achieve outcomes desired by those regions?

Will resource consent applications be made to a regional organisation or to a local council thereby continuing the risk of varying interpretation?

WHAT'S NOT INCLUDED IN THE BILL?

Consenting

The future consenting process will be critical to the success of the new legislation but the EMA's concern is that we are heading towards another complex process that results in more litigation not less.
The roles and interactions between central, regional and local governments remains unclear giving rise to concerns around interpretation of new legislation, capability and capacity.
None of those factors contribute to the desired effect of speeding up the consenting process and making its easier while ensuring the protection of our environment.

Existing Use Rights and Allocation of Resources

Our network partners at BusinessNZ have largely covered these issues in their submission and the EMA supports those arguments.

Many large-scale, long-term water users have made significant investment into infrastructure to support that water use particularly into the hydro generation and irrigation schemes critical to our energy and rural sectors.

The Randerson Report suggests 35 years is too long for a consent, but our hydro operators would almost certainly argue that's not long enough. The dams on the Waikato first appeared in 1927 and no-one is suggesting they are going away – particularly as they are critical to New Zealand's climate change response.

But it took nearly a decade for the then Mighty River Power to renew consents for those dams and they are almost at the point of having to restart that process again. The Waikato River is also close to full allocation.

There also needs to be a discussion and decision on introducing compensation when regulators take private property in the public interest and a discussion on appeal rights.

Heritage and Other Rights

Another problematic area because of its subjectivity as evidenced by the ongoing challenges faced by Wellington City in its desire to allow intensive development in certain city areas and its long battle to add modern ticketing systems to its heritage railway station. Heritage issues also dogged Auckland's Unitary Plan process as did the volcanic cones protection and viewshaft protection regulations.

These are regional issues that will be replicated in similar fashion across the country and requires a regional approach rather than a national mandate.

Auckland's tree cover rules are a constant problem and threat to uninterrupted electricity supply as an example.

In Conclusion

The EMA wants to see New Zealand's environment protected as it is a key advantage for the country both for those living, working and exporting from New Zealand and those eventually allowed to return here as tourists and significant export earners.

The EMA also wants to see environmental and planning legislation that allows for and encourages more rapid construction of critical infrastructure and encourages and enables business and economic growth.

The two are not mutually exclusive as better infrastructure is a key to enhanced lifestyle and social mobility while economic growth supports better outcomes for our people and our environment.