

Select Committee Report on the Environmental Protection Authority Bill

1. The Local Government and Environment Select Committee Report on the Environmental Protection Authority Bill ("the Bill"), was released on 28 March 2011. The Select Committee makes some recommendations which would substantially amend the Bill.
2. Both the Labour Party and the Green Party oppose the Bill. The Labour Party is concerned that the functions of the Environmental Protection Authority ("EPA") are too narrow and the EPA is not sufficiently independent from the Minister for the Environment to allow it to provide effective environmental leadership. Labour believes that the EPA's objectives are inadequate because they do not expressly require the EPA to protect the environment and also believes that the Bill is unnecessarily complicated in respect of the need for the EPA to take Maori perspectives into account in its decision-making.
3. The Green Party is concerned that the EPA's lack of autonomy from the Ministry for the Environment and the procedural, rather than purposive focus of the Bill will prevent the EPA from providing a strong, independent, well-resourced body to protect and enhance environmental quality and value.

New Parts 5A and 5B

4. The most noteworthy amendment recommended by the Select Committee is the insertion of new Parts 5A and 5B along with the necessary consequential amendments.
5. New Part 5A enables the EPA to be a potential decision maker under the Imports and Exports (Restrictions) Act 1988. This means that the EPA would be responsible for the processing and deciding of applications for import and export permits, the processing and deciding of applications for exemptions and also the maintenance of registries. New Schedule 6 amends the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 so that the EPA is provided with decision making powers in relation to the export and import of specified chemicals and waste. These decision making powers are currently carried out by the Ministry of Economic Development.
6. New Part 5B and new Schedule 7 transfer to the EPA the permitting and enforcement functions under the Ozone Layer Protection Act 1996 and the associated regulations, which are currently carried out by the Ministry for the Environment.

Objectives

7. The Select Committee recommends amending Clause 11 so that the objective of EPA includes the EPA undertaking its functions in a way that furthers any objectives or purposes stated in respect of an environmental Act (includes the Climate Change Response Act 2002; Hazardous Substances and New Organisms Act 1996; Imports and Exports (Restrictions) Act 1988; Ozone Layer Protection Act 1996; Resource Management Act 1991).

Functions of the EPA

8. The Select Committee has recommended making amendments to Clause 12 so that it is clear that the EPA functions include providing technical advice to the Government and Crown entities on any matter relating to its functions under an environmental Act.

Ministers' Powers

9. The Select Committee has recommended amending Clause 15 to insert new sub clause (1AA) to clarify that provisions relating to the delegation of functions to the EPA apply to any Minister delegating to the EPA under an environmental Act, not just the Minister for the Environment.

Minor amendments

Commencement

10. The Select Committee has recommended an amendment to Clause 2 (the commencement clause), so that it is clear that any provision that has not been brought into force earlier (Part 1 and 2 comes in to force on the date the Bill receives royal assent and other provisions may come into force earlier under an order in council) come into force on 1 December 2012.

The Power to Contract

11. The Select Committee has recommended amending Clause 13 to clarify that the EPA must "have regard to", rather than "take into account" the various matters, such as the desirability of keeping institutional knowledge within the EPA, when deciding whether to enter a contract authorising a person to carry out a function of the EPA.

Committees and subcommittees

12. The Select Committee recommends inserting new section 18C to ensure that committee and subcommittee membership is not limited to persons with knowledge and experience in the subject matter of a particular application. Committees are simply to have "collective" knowledge on the matter to be considered. The Select Committee has also recommended inserting new clause 17(2A) to prevent EPA board members from being appointed to the Maori Advisory Committee.

Property

13. The Select Committee has recommended adding new sub clause (3) to Clause 23 to make it clear that property owned by the Ministry for the Environment solely or principally for the purposes of the former EPA, are to be vested in the EPA. Similar amendments have been made in several other clauses to ensure that property owned by a former agencies vest in the EPA as a consequence of the transfer of functions under the various environmental Acts to the EPA.

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