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In addition to the above conditions, authors give their consent for the digital copy of their work to be used subject to the conditions specified on the Library Thesis Consent Form and Deposit Licence.
A CRITICAL ANALYSIS OF THE LEGAL FUNCTIONS
AND PRACTICES OF CENTRAL AND LOCAL GOVERNMENT
IN NEW ZEALAND IN RESPECT TO ENVIRONMENTAL HEALTH

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A thesis submitted in fulfilment of the requirements
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ABSTRACT

Environmental health combines public health and environmental planning, in a multidisciplinary approach that acknowledges the intrinsic link between human health and the environment. Recognising its multidisciplinary nature and mobilising a “whole-of-government” approach is important in monitoring, promoting and improving environmental health.

While this area is rich in literature from the medical and social sciences perspective, there is little focus on the legal perspective. Developing the legal perspective of environmental health is imperative to create a workable, integrated environmental health framework which is capable of addressing the many contemporary environmental health challenges faced today.

Accordingly this thesis focuses on a critical analysis of the legal functions and practices of central and local government in New Zealand in respect to environmental health. The critical analysis of this thesis is divided into two key propositions:-

(a) Is the law and governance relating to environmental health in New Zealand appropriate for the 21st century?
(b) What improvements or reforms to the law and governance in respect of environmental health are desirable for the future?

New Zealand’s approach to environmental health has been complicated by historical factors. This ad hoc development has resulted in a fragmented system with a large number of interested parties. The separation of health and environmental law has resulted in a plethora of legislation being relevant to environmental health management in New Zealand. These factors contribute to environmental health being difficult to collate into a complete and discernible framework. Accordingly this thesis begins by providing foundation chapters that establish the nature and content of New Zealand’s environmental health framework prior to analysis.
The discussion of reforms includes an examination of environmental health provisions relevant to central government and local government, with a view to determining the best allocation of functions. It appears that reforms are pulled into two directions – either towards consolidation at central government level, or collaboration at local government level. The thesis concludes that the law and governance relating to environmental health in New Zealand is not appropriate for the 21st century, and requires substantial reform. Secondly, as assessed in the chapters of the thesis, there are major pointers towards a need for a principled collaborative approach which will bring the legislation together into an integrated environmental health framework. Maori and local communities must also be adequately provided for.

The thesis endeavours to set down the law as at the 1st of December 2012. Accordingly the statutes and sections discussed were in force at this date. Some of the Bills and proposed reforms were passed after this date and, where relevant, this has been acknowledged within the thesis.
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Chapter 1 - INTRODUCTION

1.1 INTRODUCTION

Environmental health combines public health and environmental planning in a multidisciplinary approach that acknowledges the intrinsic link between human health and the environment. Recognising its multidisciplinary nature and mobilising a “whole-of-government” approach is important in monitoring, promoting and improving environmental health.

New Zealand’s environmental health framework has developed to include distinct but related areas (such as air quality, water quality, waste management, food regulation and land use) regulated at local, regional and national levels. The result is a vast, overlapping framework involving multiple parties and a plethora of legislation. While the core pieces of legislation in environmental health management are the Resource Management Act 1991, the Health Act 1956 and the New Zealand Public Health and Disability Act 2000, there are over sixty statutory enactments that are relevant to environmental health management. The key interested parties include the Ministry of Health, Ministry for the Environment, Parliamentary Commissioner for the Environment, Environmental Protection Authority and Department of Conservation at central government level, and regional councils, territorial authorities and district health boards at local government level. However a wide variety of other ministries, advisory boards, committees and statutory officers are also involved in environmental health management.

Accordingly various documents have been added to an appendices in this thesis to assist the reader in identifying the environmental health framework and aid in recognising the relevant issues. The first appendix is a flow chart designed by the thesis writer to identify key central and local government parties involved in environmental health. This flow chart is referred to throughout the thesis. The next table illustrates the variety
of ministries involved at central government level by listing the ministries and the corresponding acts that they administer. Tables are then provided to demonstrate the role of various committees and boards under different pieces of environmental health legislation. To assist the reader with chapter 8, *Environmental Health – Maori Perspective*, a table outlining references to Maori in environmental health legislation is also included.

The final document in the appendices is a list of acts relevant to environmental health management. The alphabetical list of 60 acts demonstrates the broad nature of the area and the need to develop an integrated framework for effective and efficient environmental health management.

The thesis involves a critical analysis of the legal functions and practices of central and local government in New Zealand in respect to environmental health. It will consider the adequacy of the present functions and structures, and assess the need for reform. This introductory chapter will identify the key propositions advanced in the thesis and will provide an overview of each chapter.

1.2 KEY PROPOSITIONS OF THE THESIS

In providing a critical analysis of environmental health in New Zealand it is important first to identify the legal functions and practices of central and local government and define the parameters of the framework. Identifying other interested parties (including non-government organisations) is also important to get a true understanding of how environmental health practitioners function in New Zealand. Accordingly the initial chapters will be dedicated to this objective.

Once the framework is established the thesis provides a discussion as to the adequacy of the present functions and structures and it identifies advantages and disadvantages in the current system. The question is asked as to what is expected of an effective and efficient environmental health framework and whether this outcome is currently being delivered. Whether New Zealand is delivering this outcome with the most effective governance arrangement is also discussed.

The thesis then considers proposed changes and reforms currently being considered by the government or recently adopted (such as the Public Health Bill, the resource
management and local government reforms, establishment of an Environmental Protection Authority, use of collaborative forums and / or accords) and whether these developments are likely to improve the current framework or pose new challenges.

Following this analysis, the thesis considers other options for reform and critically analyses whether these options provide for the ideal of an effective and efficient framework (identified above). In assessing the adequacy of the framework and the effectiveness of any reforms it is necessary to discuss ideals in environmental health frameworks and whether they are actually achievable.

Essentially an integrated and coordinated system of environmental health governance involving all interested parties (central and local government agencies, Maori and the public) is needed. This collaborative framework must be set in a legal context of consistent policies, practices, and rules. Statutory mandatory rules (in the form of objects, principles and considerations) must underpin the system. Accordingly collaboration is a core theme in this thesis and it will be discussed throughout the text and addressed in the conclusion.

Two propositions will be answered:
(a) Is the law and governance relating to environmental health in New Zealand appropriate for the 21st century?
(b) What improvements or reforms to the law and governance in respect of environmental health are desirable for the future?

These propositions will be answered in the conclusion of the thesis.

1.3 AN OUTLINE OF THE STRUCTURE OF THE THESIS

The environmental health movement has gained momentum since 2004 when a definition of environmental health was established by the World Health Organisation (WHO). In 2008 the WHO called for health systems “to champion and support other sectors in placing health and health equity at the centre of urban governance and planning.”¹ The WHO emphasised that the health sector had an essential role in securing environmental health² including important responsibilities to:³

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Ensure that environmental health issues are adequately reflected in inter-sectoral policy development and implementation.

Incorporate environmental health in disease-specific and integrated health programmes.

Identify and respond to emerging threats and opportunities for health.

The Ministry of Health’s 2009/2010 Statement of Intent incorporates these recommendations and focuses on “developing an ‘adaptable and resilient’ health system”\(^4\) that recognises the need to address environmental factors with a holistic approach to human health. This shift in approach is supported by reports commissioned from the Public Health Advisory Committee by the Ministry of Health. In 2002 the first report involved an examination of the effect of environmental factors on human health.\(^5\) This report was followed by projects on healthy urban living, at risk groups, links between urban environments and health and a historical perspective on public health and urban planning.\(^6\)

The Public Health Advisory Committee (PHAC) recommendations to the Ministry of Health are consistent with the WHO’s recommendations and see environmental health as one of three key focal points for creating a healthy urban environment.\(^7\) Partnership and inter-agency approaches to monitor and improve environmental health are advocated together with recommendations to the Ministry of Health that the health system “enhances the provision of public health expertise to relevant local, regional and central government agencies”\(^8\) to improve environmental health. Co-ordination at ministerial level between the Ministry of Health and the Ministry for the Environment will ensure human health recognition in “environmental standards, regulations and initiatives”.\(^9\)

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5 Public Health Advisory Committee *The Health of Peoples and Communities: The Effect of Environmental Factors on the Health of New Zealanders* (Public Health Advisory Committee, Wellington, 2002).


7 The three key areas include “Urban Form and Transport”, “Environmental Health” and “Health Facility Infrastructure”. Public Health Advisory Committee *Healthy Places, Healthy Lives: Urban Environments and Well-being* (Public Health Advisory Committee, Wellington, 2010) at vii.


The inclusion of public health in environmental planning law (which originated in the industrial revolution) has been revived in current public policy planning trends with increasing opportunities for central, local government and other agencies to work in partnership to achieve environmental health outcomes. In 2000 “The New Zealand Health Strategy” provided a vehicle for central government to set “the platform for the government’s action on health” encouraging an integrated “whole of government” approach to building healthy communities and environments.

Resulting initiatives have included environmental health indicators (a precursor to development of an Environmental Health Action Plan for New Zealand), increased inter-agency co-operation and specifically targeted environmental health initiatives. The Public Health Bill (currently awaiting its second reading) aims to clarify the environmental functions of territorial authorities and central government, with emphasis on providing national leadership and coordination.

The PHAC has identified a number of current opportunities for health to be incorporated in environmental legislation, regulations and standards. The most apparent are the current government reviews of the Resource Management Act 1991. This provides an opportunity to “advocate that human health be incorporated as a priority outcome in phase II of the Resource Management Act review”. Further reviews of the Resource Management Regulations 2004 (the Air Quality Standards) provide an opportunity for both the Ministry of Health and the Ministry for the Environment to collaborate on air quality standards to ensure both health and environmental impacts are considered in planning. Increased focus on co-ordination and a central vehicle for environmental health have led to the development of an

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13 This goal has not been completed due to changes in priority and funding within the Ministry of Health.
Environmental Protection Authority (as part of the Resource Management Act reforms)\textsuperscript{17} which could potentially improve the currently fragmented approach.

The focus of the reforms has been on simplifying and streamlining resource management processes under the Act. Paired with the resource management reform has been the current government’s “Better Local Government” reform. While first suggested in 2009,\textsuperscript{18} the programme was launched in its current form in 2012.\textsuperscript{19} These reforms also aim at simplifying processes and updating the law around local government. Of particular interest to environmental health is the development of a framework for central and local government regulatory roles and the redefining of the purpose of local government.\textsuperscript{20}

This focus on environmental health planning is reflected globally with other health systems increasing their involvement in environmental planning. In Australia following the establishment of a National Environmental Health Strategy\textsuperscript{21} the federal government is recognising the importance of linking health and urban planning with preventative health strategy.\textsuperscript{22} In the United Kingdom the National Health Service has established a Healthy Urban Development Unit “to improve cooperation between the town planning and health systems”.\textsuperscript{23}

In light of these developments in environmental health management in New Zealand this thesis provides an opportunity to analyse critically the legal functions and practices of central and local government in environmental health in order to consider the adequacy of the present functions and structures, and assess the needs for reform.

The interdisciplinary, inter-agency nature of environmental health has resulted in an overlapping framework with interested parties at local, regional and national level. Initially the environmental health system appears to be a basic two-tiered approach. Constitutional authority remains with central government and local government derives

\textsuperscript{17} Resource Management (Simplifying and Streamlining) Amendment Act 2009.
\textsuperscript{18} Bill English & Rodney Hide “Government Statement on Regulation: Better Regulation, Less Regulation” (17 August 2009).
\textsuperscript{20} See discussion in Chapter 9 of this thesis, \textit{Proposed Solutions and Reforms}.
\textsuperscript{21} Commonwealth of Australia \textit{National Environmental Health Strategy} (AGPS, Canberra,1999).
\textsuperscript{22} Commonwealth of Australia \textit{National Environmental Health Strategy} (AGPS, Canberra,1999).
\textsuperscript{23} Public Health Advisory Committee \textit{Healthy Places, Healthy Lives: Urban Environments and Well-being} (Public Health Advisory Committee, Wellington, 2010) at iii.
its environmental health powers and functions from Parliament via statute (not a constitutional document) and is therefore subordinate to central government. Central government produces directives and legislation and delegates regulatory powers to local government who implement environmental health at the community level. The legislative tool provides central government with the ability to influence determinants of health positively through monitoring, administrating and enforcing behaviour. Two main statutes appear responsible for environmental health management in New Zealand, the Health Act 1956\(^2\) and the Resource Management Act 1991.

However the reality of setting out New Zealand’s environmental health framework is much more complex. Environmental health management has often been reactionary in nature with legislative controls developing as and when they are needed resulting in an ad hoc framework. The two main sources of legislation were developed 35 years apart and much of the original environmental health provisions (included in the Health Act) are based on outmoded and outdated assumptions.

While the idea of an environmental health framework has been referred to throughout the thesis it is important to note that there is no set recognised framework for environmental health management in New Zealand that is adopted and shared by all parties working in the area. Interestingly (given the importance of health and environmental management) there is little discussion in New Zealand of the idea of an all encompassing cohesive framework. Although commentary and academic discussion infers the existence of an integrated framework (albeit flawed) most academic contributions in this area have been focussed on either specific aspects of environmental health (such as air quality or waste management) or the broader policy notions of collaborative “whole-of-government” approaches without focussing on the need for identifying a tangible framework.

When environmental health is “unpacked”, there are a broad raft of parties involved. The coordination of all these parties is required for an effective system. The number of parties is due to the ad hoc nature of environmental health’s development in New Zealand and due to historical factors which required various issues to be retained at central government level. Similarly, when examining legislation, environmental health

\(^2\) This Act is now largely supplemented by the New Zealand Public Health and Disability Act 2000 though it remains as the primary Act for environmental health management.
concepts are not provided for solely by the Health Act 1956 and the Resource Management Act 1991. Instead environmental health management is contained in a wide scope of approximately seventy different pieces of legislation in New Zealand with around fourteen different Acts providing core provisions on environmental health.\textsuperscript{25} When local government bylaws are also taken into account there is a plethora of regulation in this area. The sheer volume of related law makes it difficult to collate the roles of each individual and illustrates one of the core criticisms of New Zealand’s environmental health framework – that is hard to identify and needlessly complex.

Accordingly this thesis begins by providing foundational chapters that define environmental health, discuss historical and global perspectives, outline central government and local government functions and the role of Maori in environmental health management. In doing so, these foundational chapters establish the nature and content of New Zealand’s environmental health framework.

As part of a critical analysis of central government and local government, functions, roles, issues and problems are then identified within the framework. The final phase of the thesis then considers proposed solutions and reforms with a view to improving the current framework.

\textit{Chapter 2- Meaning and Importance of Environmental Health} – provides a detailed account of current environmental health philosophy and discusses the meaning of environmental health in a broad multidisciplinary sense prior to shaping a set definition for use throughout the thesis. The definition of environmental health has been restricted in this thesis to public health matters related primarily to aspects of the physical environment (that are monitored and regulated by central and local government). While this definition is narrower than the World Health Organisation definition,\textsuperscript{26} it is in keeping with the New Zealand government’s understanding of environmental health. While the concept is not explicitly defined in New Zealand legislation, the new Public Health Bill separates environmental health from border health and non-communicable diseases, which provides a useful limitation. This narrower scope encourages a legal analysis of this area and clarifies the focus of the thesis. The exclusion of social factors (such as smoking tobacco, drinking alcohol, diet

\textsuperscript{25} See alphabetic list of environment health Acts in appendices of thesis.
\textsuperscript{26} World Health Organisation (2002).
and lifestyle choices) is supported by both the government’s current approach to environmental health planning (in the Public Health Bill and other planning initiatives) and recognises the balance reached between individual autonomy and government intervention.

Chapter 3 – The History of Environmental Health – provides insight into the development of the current environmental health legal framework and the relationship between public health law, environmental law and planning law. The emergence of the local government, central government governance model and the development of New Zealand’s environmental health legislation (from its origins to current legislation) are discussed to provide insight into how the current system evolved.

Chapter 4 – Environmental Health - a Global Perspective – considers the global nature of environmental health issues and identifies the key international instruments in the global context together with the impact of international law on New Zealand’s domestic law and policy. Human rights to environmental health (i.e. the right to live in a clean environment with access to healthcare) is an emerging issue in this area. Due to the broad scope of human rights, and the word limit constraints of this thesis, human rights have only been briefly addressed as a relevant topic.

Chapter 5 – Environmental Health Functions of Central Government – identifies the functions and practices of central government. The section begins with a discussion of the core principles in New Zealand environmental health governance and explains the hierarchy of planning documents and its impact on environmental health management. The chapter identifies key parties, including the Ministry of Health, Ministry for the Environment, Parliamentary Commissioner for the Environment, the Environmental Protection Authority and the Department of Conservation and outlines each party’s roles and responsibilities. The chapter concludes by discussing central government’s role in national planning and the use of national health strategies and policy frameworks,

Chapter 6 – Environmental Health Functions of Local Government – the chapter identifies the core parties at local government level – regional councils, territorial authorities (city councils, district councils and unitary authorities) and district health boards. The chapter then discusses the role of local government in environmental
health management, and the use of bylaws, local authority planning documents, plan rules and enforcement remedies. The chapter concludes with a discussion of collaboration and consolidation arguments present at local government level. This involves consideration of regional service plans and health impact assessment as potential tools to aid in collaborative environmental health management.

Both chapters 5 and 6 identify problems and issues in implementing the current environmental health framework. These issues are summarised in Chapter 7 – Critical Analysis of Central and Local Governments’ Environmental Health Functions. This chapter begins with a discussion of the central government / local government relationship and then considers the advantages and disadvantages of the current system. The chapter concludes by discussing whether the current framework delivers an effective and efficient system, and whether the core principles of environmental health are being adequately provided for.

Chapter 8 – Environmental Health – Maori Perspective provides a discussion of the avenues for effective Maori influence in environmental health. It then considers whether Maori expectations are being met by the current framework or if changes are required to provide for an appropriate accommodation of Maori interests in environmental health management.

Chapter 9 – Proposed Solutions and Reforms - considers proposed changes and reforms to address the disadvantages in the current system identified in Chapters 5, 6, 7 and 8. The effectiveness of the proposed changes and the viability of the reform are also considered. The chapter starts by considering the government’s current proposed changes known as the “Better Local Government” reform and resource management 2013 reforms. The chapter then considers proposed changes or reforms suggested by the thesis writer. These proposed changes include the establishment of a national environmental health action plan, the establishment of an independent environmental health coordinating body (based on the EnHealth Council model used in Australia) and the use of a collaborative environmental health forum or an accord.

Chapter 10 – A look to the Future and Conclusions – reflects on the discussions in previous chapters and considers whether an ideal environmental health framework is an
achievable goal. The chapter answers the two key propositions mentioned earlier in this thesis:-

(a) Is the law and governance relating to environmental health in New Zealand appropriate for the 21st century?

(b) What improvements or reforms to the law and governance in respect of environmental health are desirable for the future?

Recent changes and developments are also considered.

The thesis endeavours to set down the law as at the 1st of December 2012. This has been referred to in footnotes in various parts of the thesis as “the date of this thesis” or “thesis date”. Over the period in which this thesis has been researched and written, the law has continued to change with new legislation being introduced and older legislation being revised, updated or superseded by new changes. Changes in successive governments (and their agenda and interest in health and the environment) has also brought new reforms and the introduction of new governing bodies. These issues have meant that various aspects of this thesis have been rewritten over time to reflect the evolution of the law in this area. The use of a set date, 1st of December 2012, has been necessary so that the law (while constantly evolving) could be analysed and discussed at a set point in time.27

27 Where significant changes have occurred after the date of the thesis, effort has been made to reflect these changes in footnotes or discussion. This is particularly relevant to proposed changes and reforms discussed in chapter 9 and the conclusions drawn in chapter 10.
Chapter 2 - MEANING AND IMPORTANCE OF ENVIRONMENTAL HEALTH

The concept of environmental health and the promotion, monitoring and maintaining of environmental health principles has gained increasing recognition among scientists, environmentalists, health professionals, legal experts and politicians. As we enter the 21st Century, governments are becoming increasingly aware of the impact of exposure to environmental factors on human health. Aspects of our environment from the air that we breathe, the food that we eat, the water that we drink, infrastructure we use and the waste we produce all have impacts on our general health. These impacts include our exposure to contaminants and disease, risk of injury and effects on physical and mental well-being.

The idea of one’s health being intrinsically linked to one’s environment is not a recent construction. The industrialization of the 19th century brought increased populations into urbanised areas, putting pressure on local environments leading to overcrowding, lack of sanitation, dangerous work conditions, air pollution, malnutrition, poverty and disease. In response, society underwent a rapid change recognizing that the cause of disease and ill-health could be directly linked to one’s lifestyle and surroundings. The need to react to these problems – to treat the sick and provide education to contain and prevent the spread of disease led to the emergence of basic public health principles. In its simplest form environmental health was a branch of public health focusing on addressing the health impact of environmental conditions.

The concept of environmental health has continued to grow and evolve from this basic reactionary concept focusing on curing a patient, to a general focus on entire populations and the long term health effects of environmental exposure. Environmental health is a fluid concept, always changing and evolving. While reactionary measures helped “developed” countries such as New Zealand deal with the industrialization and urbanization of the past, the 21st century is dramatically changing the face of environmental health.

As a developed nation, New Zealand is increasingly becoming aware of the cost of the modern urban lifestyle and its impact on the health of the New Zealand population. In January 2006 at the World Economic Forum, the Environmental Performance Index ranked New Zealand first (out of 133 countries) by considering health, biodiversity, energy, water, air and natural resources. When comparing New Zealand’s Health statistics with those in previous years the total avoidable mortality rate has decreased by 40% and the non-avoidable mortality rate by 23% from 1980 to 2002. While this paints a favourable picture of health in New Zealand, critics argue this is more a reflection of improved medical technology than a reduction in diseases like diabetes, heart disease, cancers, respiratory and chronic illnesses which are often linked to environmental health concerns. While science has afforded increased knowledge of what constitutes a healthy environment needed for a long productive life, the population is increasingly faced with a range of emerging issues including the discovery of pollution in our “clean living environments” and the effects of advancing technology and its availability. Computers, cell phones, motor vehicles, escalators, elevators, air conditioning, make it increasingly easy for people to live sedentary lifestyles inside artificially controlled environments at work and at home.

With further scientific knowledge, and a greater interest in preserving and promoting the health of our environment, the need for environmental health principles is increasing as environmental health again reinvents itself. While the emergence of

environmental health issues are often global, “the problem, and the response, will often be regional or local, even individual”.32

2.1 DEFINING “ENVIRONMENTAL HEALTH”

The term “environmental health” is broad, often leading to debate as to its meaning and uncertainty in its application. The true nature of the term “environmental health” becomes apparent when the concepts of “environment” and “health” are separately examined.33 The latter terms are themselves capable of broad definition and are the subject of much academic literature, philosophy and debate.

While environmental health functions are primarily derived from the Health Act 1956,34 this Act provides no founding definition. Similarly the terms “health” and “well-being”, while used frequently in legislation (i.e. when describing the purpose of local authorities35), are not defined in any of the core legislation that addresses environmental health issues.36

Instead the undefined terms are often adopted in legislation leaving the concepts broad and open to interpretation. While this allows for flexibility in the terms, usage of the broadness leads to uncertainty in application. It is hoped that the proposed Public Health Bill may bring some greater certainty to this issue by defining concepts, identifying environmental health issues and providing in more detail for the role of local authorities.37 The Public Health Bill, which reviews and updates the Health Act 1956, gained Cabinet policy approval in November 2006 and was introduced to Parliament in 2007.38 In June 2008 the Health Select Committee reported back on the bill which is now awaiting its second reading in Parliament.

35 Local Government Act 2002, s 10(b).
37 Ministry of Health Public Health Bill Summary (Ministry of Health, Wellington, 2006) at 3.
38 Ministry of Health Website Health Act Review and the proposed Public Health Bill (Ministry of Health, Wellington, 2007).
2.1.1 Defining the Concept of “Environment”

The definition of “environment” initially appears simple – the surrounding that people live in, be it locally, nationally or globally. In New Zealand s 2(1) of the Resource Management Act 1991 interprets the term “environment” to include:

(a) Ecosystems and their constituent parts, including people and communities; and
(b) All natural and physical resources; and
(c) Amenity values; and
(d) The social, economic, aesthetic and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

Courts have interpreted s2(1)(d) to include activities undertaken by communities. This definition has been widely adopted in New Zealand environmental health practice.

In examining the concept of “environment” a basic separation can be seen between the personal environment, over which individuals have control and the outdoor environment over which individuals have little control. The personal environment is largely affected by an individual’s actions and personal choices in respect to what they eat and drink, whether they exercise or smoke, the state of their living conditions (i.e. cleanliness and hygiene) and their general interest in health. Personal choices, such as whether a person smokes tobacco or takes illegal drugs, can have direct health consequences for themselves and their family. While health and education services are available, and governments use legislation and guidelines to prohibit and control certain activities, the state’s intervention is limited to education, prohibition, control and incentive mechanisms. Therefore the state of one’s personal environment is largely based on individual autonomy.

It follows that environmental health experts often focus on the outdoor environment, such as the surrounding community and facilities, including recreational and educational facilities and workplaces. The urbanised environment may be congested, polluted, noisy and stressful. The intensity of these factors is felt differently at varying levels in society with lower socio-economic groups often being exposed to greater risks.

at work and at home. With increasing political pressure to address these health risk issues, central government and local authorities are in a better position to intervene, control and monitor the outdoors environment using education, legislation and enforcement.

2.1.2 Defining the Concept of “Health”

The idealistic concept of “health” has largely been defined by contrasting it with the notion of “ill-health” and “death”. This initially shaped the concept of public health as being reactionary in nature, focused on curing disease and preventing death. In recognizing one’s health in the absence of illness (thus forming an inclusive concept of health) the Constitution of the World Health Organisation in 1948 established the most commonly used definition of health - “a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity”. As New Zealand legislation does not directly define “health” this definition has been argued to be “the nearest to an official definition that we have” on the basis of New Zealand being a member of the World Health Organisation (WHO) and “a party to its basic documents”.

The WHO’s basic concept of health is consistent with the Maori model of health – “Te Whare Tapa Wha” – which is commonly used in the New Zealand health environment by parties such as the Public Health Advisory Committee (PHAC) who adopt Te Whare Tapa Wha in carrying out health impact assessments. The term Te Whare Tapa Wha translates to a “four sided house” consisting of “Te Taha Whanau” (family / community well-being), “Te Taha Hinengaro” (mental well-being), “Te Taha Wairua” (spiritual well-being) and “Te Taha Tinana” (physical well-being). Each of the four sides must be maintained to ensure health and well-being.

Like the WHO definition, Te Whare Tapa Wha takes a broad view of health that includes physical, mental and social well-being, but extends the concept further to

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41 DW Moeller Environmental Health (Harvard University Press, USA, 2005) at 4.
45 Rob Quigley “Workshop – HIA in Action” (paper presented to the New Zealand Institute of Environmental Health Annual Conference, Gisborne, 7-9 March 2007).
include emotional and spiritual well-being. In doing so, Te Whare Tapa Wha gives weight to the “interrelated components of family and personal relationships” and incorporates a “sense of communion with the environment, access to heritage and cultural integrity”.

While the “four sides” of health can be applied to individuals, in practice it is often extended to the collective use of the concept of “public health”. The Health and Disability Services Act 1993 refers to “public health” as “the health of all of the people of New Zealand; or a community or section of such people”. In practice, public health involves the promotion, maintenance and improvement of health in a community “through organised efforts of society”. Key themes of collective rather than individual focus, improving, protecting and promoting health and working towards the public good are carried from here into environmental health practice.

2.1.3 Defining “Environmental Health”

Despite the broadness of these concepts several definitions of environmental health have been established and accepted. The World Health Organisation has defined environmental health as:

… those aspects of human health, including quality of life, that are determined by physical, chemical, biological, social and psychosocial factors in the environment. It also refers to the theory and practice of assessing, correcting, controlling and preventing those factors in the environment that can potentially affect adversely the health of present and future generations.

This definition is two-fold, confirming that human health is intrinsically linked to its surrounding environment (and that the promotion and maintenance of environmental health provides the opportunity to address risk factors), as well as confirming that an increase in the general quality of our environments will lead to improved health both in the present and the future.

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49 Health and Disability Services Act 1993, s 2.
51 World Health Organisation (2004). The draft form of this definition was developed at a World Health Organisation Consultation in Sofia, Bulgaria in 1993.
This founding definition has been adopted in various jurisdictions with certain elements being enhanced. In the United States of America, the concept of environmental health has been fused with public health ideology as a way of recognizing and addressing health hazards in a community.\textsuperscript{52} This narrow definition of environmental health effectively reduces it to a prevention and reaction role, overlooking the essential element of enhancing one’s environment beyond a “low-risk” level in an effort to not only maintain current health standards but improve on them.

Similarly the European Charter on Environment and Health appears to approach environmental health from a risk assessment perspective, stating that:\textsuperscript{53}

\begin{quote}
… environmental health comprises those aspects of human health and disease that are determined by factors in the environment. It also refers to the theory and practice of assessing and controlling factors in the environment that can potentially affect health. It includes both the direct pathological effects of chemicals, radiation and some biological agents, and the effects (often indirect) on health and well-being of the broad physical, psychological, social and aesthetic environment, which includes housing, urban developmental, land use, and transport.
\end{quote}

The European definition again focuses heavily on identifying and addressing risks to human health but leaves scope for a broader interpretation and is more pointed in its suggested applications. The broadness in definition is largely a result of the “language of democracy”. In an effort to create concepts that will be readily acknowledged and applied by various nations, compromise occurs leaving definitions which are open to interpretation in their application.

In New Zealand, the key aspects of the WHO’s definition of environmental health – assessing, improving and controlling environmental factors, considering past, present and future generations – are applied in environmental health practice. While environmental health is not defined in legislation, the WHO’s definition is consistent with the purposes outlined in the Resource Management Act 1991 and the Local Government Act 2002. The Local Government Act, as initially enacted, states the purpose of local government includes “promoting the social, economic, environmental

\textsuperscript{52} H Frumkin (ed) \textit{Environmental Health: from Global to Local} (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
and cultural well-being of communities, in the present and for the future”. 54 Here environmental health concepts are being supported while care is taken to focus on the present as well as future generations. Similarly the Resource Management Act focuses its purpose on sustainable management including the need to enable “people and communities to provide for their social, economic, and cultural well-being and for their health and safety”, while providing for the “reasonable foreseeable needs of future generations”, maintaining the health of the environment and avoiding, remediencing or mitigating adverse environmental affects. 55

Throughout these definitions the basic premise is clear - environmental health is concerned with understanding, assessing, monitoring and controlling the impact of the environment on people and the impact of people on the environment. Accordingly the law relating to environmental health is diverse, ranging across controls on waste and pollution, health and safety, diet and housing with the “point of mutual contact being the influence the relevant activity has on human health”.56

Our understanding of this concept is largely shaped by the ethics and philosophy of our society. While some definitions are anthropocentric, focusing only on the effects to human health, others view environmental health as a balancing act between humans and the environment – humans being part of a greater ecosystem. Similarly, while some definitions focus on interventions to improve the overall condition of the environment, others are limited to focusing on removing health hazards.

Environmental health is a constantly evolving concept which often results in difficulties in its interpretation. While strongly tied to its origin in public health, environmental health continues to adapt and evolve as concepts such as sustainability are introduced to its application.

Although these problems in definition have led to vagueness in meaning and debate over correct interpretation, it remains clear that the concept of environmental health

54 Local Government Act 2002, s 10. (Section 10 was amended in 2012.)
55 Resource Management Act 1991, s 5. These principles (including matters in Part II are broadly interpreted to result in a balanced overall judgment).
56 F McManus Environmental Health Law (Blackston Press Limited, Great Britain, 1994) at 1.
entails many things from an interdisciplinary area of knowledge and research to an “arena of applied public health practice”. 57

The acceptance of these basic premises and the merging of the varying definitions of environmental health highlight important goals for future practice – to mediate interaction between people and the environment, use education as well as control mechanisms to encourage personal responsibility and freedom of choice in health issues, 58 and also to create healthy and sustainable environments that in turn nurture the health of their inhabitants.

2.2 MULTI-DISCIPLINARY APPROACH TO ENVIRONMENTAL HEALTH

The complexity of the issues involved in environmental health requires a multi-disciplinary approach. For example, scientists, environmentalists, epidemiologists, statisticians, engineers and physicians often identify environmental health concerns through examining changes in the natural environment, trends in the public health of a population or the emergence of illness in individuals.

Once environmental health concerns are identified, economists, policy analysts, politicians and legal experts are often involved in mitigating and controlling the effects of environmental health concerns by commissioning inquiries, consulting with both experts and the general public, and implementing control strategies in an attempt to decrease negative health effects, and monitor and promote environmental health. 59

2.2.1 Intersectional Co-operation

In New Zealand, national legislation provides a framework for environmental health and local authorities implement the system determining specific requirements and establishing enforcement mechanisms. This results in a fragmented network of control with the promotion, monitoring and maintenance of environmental health concerns

57 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
59 DW Moeller Environmental Health (Harvard University Press, USA, 2005) at 3.
being spread between various agencies at a local level resulting in varying degrees of co-operation.\footnote{Public Health Advisory Committee \textit{The Health of Peoples and Communities: The Effect of Environmental Factors on the Health of New Zealanders} (Public Health Advisory Committee, Wellington, 2002) at 6.}

Many environmental health functions are also managed by separate agencies outside of local authorities, for example, OSH (occupational health and safety), New Zealand Food Safety Authority (food safety)\footnote{Since the date set for this thesis the NZFSA has been absorbed into the newly established Ministry for Primary Industries.}, Accident Compensation Corporation (injury) and Environmental Risk Management Authority (hazardous substances and new organisms)\footnote{This body has since been replaced by the Environmental Protection Authority under the Environmental Protection Authority Act 2011.}.

This level of fragmentation makes it hard to determine the jurisdiction of each party. There can be difficulty in reaching agreement between parties as to where responsibility and resources should be allocated. There are concerns about variations in quality and services between regions where local authorities carry out environmental health functions.\footnote{Public Health Advisory Committee \textit{The Health of Peoples and Communities: The Effect of Environmental Factors on the Health of New Zealanders} (Public Health Advisory Committee, Wellington, 2002) at 6.} Environmental health monitoring can also be effected through different agencies using different methodologies to monitor environmental health. Standard environmental health indicators will address this problem.

However, the above framework also allows for environmental health concerns to be addressed using approaches that are specifically tailored to the unique characteristics of the local community and environment. This facilitates flexibility and creativity.\footnote{Tim Kelly & David Slaney \textit{“A Comparison of Environmental Legislation and Regulation in New Zealand and the United States”} (2006) 69(1) Journal of Environmental Health 20.}

Accordingly, environmental health is a broad area of practice dependent on “intersectorial co-operation and action”\footnote{WH Bassett (ed) \textit{Clay's Handbook of Environmental Health} (19\textsuperscript{th} ed, Spon Press, Taylor & Francis Group, London, 2004).} for its success. An effort is needed to draw together various specializations into an integrated framework so environmental health concerns can be adequately addressed. Without the sharing of information and expertise between disciplines locally, nationally and globally, attempts to address environmental health will be “inadequate, piecemeal and destined to fail”.\footnote{DW Moeller \textit{Environmental Health} (Harvard University Press, USA, 2005) at 4.}
Encouraging interdisciplinary co-operation and striving for an integrated system is not without difficulties. Values and theories often conflict between interested parties who are increasingly reaching beyond their role as experts in their field and entering the realm of negotiation and decision making, which demands flexibility from them if a holistic perspective of environmental health is to be achieved.67

Interested parties who previously dealt with government and local authorities are increasingly being thrust into the limelight as public interest in environmental health peaks and politics and diplomacy enter the equation. Public interest in environmental health concerns is growing. Public health information is freely available on avenues such as the internet which has led to a new knowledge base among individuals in the community. Public demand on the government is greater with the expectation that our environments should not only be safe, but be conducive to encouraging good health and well-being.

The lack of an adequate integrated framework between parties from various disciplines has frustrated attempts to address many environmental health issues. Existing frameworks to define and promote environmental health have “not kept pace with the revolution in knowledge or attitudes”.68 Unfortunately the pressure of politics and economics has left its mark on environmental health with changes to environmental health practice often tainted by concepts such as “cost-effectiveness” or “laissez faire governance”69 that have little to do with improving living environments.

Clearly environmental health must be recognised as a multifaceted discipline that is best addressed by drawing together various specializations into an integrated framework to ensure environmental health concerns are not addressed in isolation but as part of a bigger picture of human health and environmental welfare.

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2.3 KEY DEVELOPMENTS IN ENVIRONMENTAL HEALTH PHILOSOPHY

2.3.1 The “Intrinsic Link” between Health and the Environment

A core element of environmental health is that the environment we live in has an impact on our health and well-being. This understanding originated in ancient civilizations and has developed and expanded over time – the most notable being the first legal recognition of environmental health concerns during the industrialization of the 19th Century and the resulting Public Health Acts.70

While the environment was then understood to have an effect on human health, it was during the 1960s when a key development in environmental philosophy took place – the idea that human health was just one part (of equal, not paramount value) in a larger environmental process. In 1962 a publication on the organochlorine pesticide DDT recorded the negative ecological effects of the pesticide entering the food chain and causing health risks to both humans and animals. The author of the report Rachel Carson71 placed humans within the ecosystem as part of the process, not as the controller, and noted that humans are “challenged as mankind has never been challenged before to prove our maturity and our mastery, not of nature, but of ourselves.”72

Our understanding of chemical hazards in our environment and the effects on human health continued to grow through the 1970s (onwards to the present) as new links are found between nonspecific symptoms, cancers, respiratory illnesses, birth defects and chemical exposure.

The acknowledgement of the intrinsic link between human health and the environment developed further into an integration of ecology with human health and the understanding that human activities must be compatible with environmental principles.73

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70 See the Public Health Act 1848 (UK) and discussion in chapter 3 on the history of environmental health.
2.3.2 Occupational Health and Safety

A further development in modern environmental health has been the recognition of occupational medicine as a result of public health concerns resulting from environmental exposures. Health care for workers has shifted from treatment and rehabilitation into the realm of prevention by monitoring working environments and providing education to workers to identify risks and avoid injury. Toxicological and epidemiological data has been gathered and used to identify at risk parties and establish industrial safety and hygiene programmes. Recognizing that individual workers usually cannot control their working environment or the environmental health risks they are exposed to (such as asbestos, air pollutants, bodily fluids etc) employers have been targeted to take an active role in ensuring they use risk reduction mechanisms to provide a safe working environment.

In New Zealand OSH (Occupational Health and Safety) takes an active role in ensuring employees are provided with safe work places. While Accident Compensation legislation bars employees from suing for personal injury, OSH investigates workplace injuries and can fine employers for unsafe conditions and / or make recommendations for employers to improve work conditions. These initiatives are focused on health and safety practice compliance. In June 2005 the Department of Labour launched the “Workplace Health and Safety Strategy for New Zealand to 2015” which aimed to move beyond compliance and avoidance of injury to developing a vision for “healthy people in safe and productive workplaces”. This new strategy advances environmental health concepts. In November 2006 the Minister of Labour’s progress report highlighted the importance of communication and co-operation between interested parties to encourage “government leadership, industry leadership and preventative workplace cultures”. A newly established Health and Safety Council will aid in providing governance and direction.

2.3.3 The Emergence of Environmental Health Policy and Law

While the history of environmental health will be addressed in a later chapter and environmental health law and policy will be a main focus of this research addressed in

74 Department of Labour Workplace Health and Safety Strategy for New Zealand to 2015 (Department of Labour, Wellington, November 2006).
later chapters, these topics will only be introduced here as a key development in environmental health philosophy.

The Public Health Act 1900 was the first public health legislation passed in New Zealand. This Act (together with the Health Acts of 1920 and 1956) provided core environmental health provisions for the Department of Health and local authorities. In overseas jurisdictions, policy and legislation based on environmental care and protection begin to emerge rapidly. In the United States during the 1960s initial environmental laws were established with legislators at both state and federal level creating regulatory agencies and establishing responsibility for environmental concerns. Environmental health which had initially been the responsibility of the United States Health Department and health experts, became the responsibility of new environment based agencies. This trend was followed in New Zealand in the 1980s with the removal from the Health Act of a “substantial portion of public and environmental health matters” and the subsequent shift of environmental health power from the Department of Health to other regulatory agencies.

With responsibilities for environment and health separated by a reallocation of authority and responsibility, environmental regulation and health protection became estranged from each other leading to further difficulties in environmental health promotion. Conflict has occurred between agencies with overlapping authority and jurisdiction. The lack of an integrated framework between environmental and health law in New Zealand is blatantly apparent as “conceptual and legal frameworks in public health have lagged” behind the integrated environmental framework established with the Resource Management Act 1991.

Of concern both in New Zealand and overseas is the emergence of “permissible exposure levels” as a result of advanced technology in the testing and monitoring of acceptable health risk. Globally, agencies responsible for environmental regulation are

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75 Department of Labour Workplace Health and Safety Strategy for New Zealand to 2015: Snapshot of Progress 2005/06 (Department of Labour, Wellington, November 2006).
76 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
79 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
using “quantitative risk assessment techniques”\textsuperscript{81} instead of the blanket banning of chemicals where exposure creates a risk to human health. This signals a further turning point in environmental health policy with the impact of politics and economics introducing “permitted exposure levels”\textsuperscript{82} - a balancing between environmental health concerns and economic and technological gain.

The concept of environmental health has evolved beyond its initial role in controlling public sanitation and promoting the benefits of clean living environments to human health. The emerging fields of toxicology and epidemiology have identified new concerns such as chemical exposure. With the acceptance of the intrinsic link between human health and the environment, public health services, policy and regulation continue to play an increasing role in this area.

\section*{2.4 KEY PRINCIPLES OF ENVIRONMENTAL HEALTH}

Environmental health is founded on basic principles which recognise the value of our environment and the quality of human health.

\subsection*{2.4.1 Environmental Health Operates with Consideration for the Past, Present and Future}

Environmental health is concerned not only with human health within the environment in the present, but also repairing past damage to the environment by restoring natural equilibrium in the ecosystem and planning for the future by assessing and minimizing potential environmental health risks. This same time concept is found in the application of the precautionary principle that is widely applied in environmental risk assessment. It ensures that environmental health is taken into account when assessing the potential risk to the environment that different activities pose.\textsuperscript{83}

\textsuperscript{81} H Frumkin (ed) \textit{Environmental Health: from Global to Local} (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
\textsuperscript{82} H Frumkin (ed) \textit{Environmental Health: from Global to Local} (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
\textsuperscript{83} C Raffensperger and J Tickner (eds) \textit{Protecting Public Health and the Environment: Implementing the Precautionary Principle} (Island Press, United States of America, 1999).
2.4.2 Anthropocentric vs Non-Anthropocentric viewpoints of Environmental Health

There is much philosophical debate over whether environmental health adopts an anthropocentric or non-anthropocentric view of the ecosystem. The anthropocentric viewpoint argues that protection and promotion of human health are a foundation of environmental health\(^{84}\) with a similar principle being found in Agenda 21.\(^{85}\) This viewpoint proposes that identifying human health and welfare risks is the main reason why action is taken to control potentially harmful effects of the environment. Therefore the value of an environment is estimated by looking at the environment’s ability to satisfy human needs. This viewpoint gains some credibility in that our steps to preserve and maintain the environment are always prejudiced by our desire to use nature’s resources for human benefit. It is not reasonable to think that humans are completely impartial in making environmental decisions.

Alternatively the non-anthropocentric viewpoint argues that the concept of environmental health is based on a respect for all human and non-human life, with the value of the natural environment being independent of human welfare.\(^{86}\) Human beings are merely part of the ecosystem, with no greater or lesser value than any other living thing based on the premise that humans make up a small number of the living organisms which share the environment.

In environmental health (which often involves a delicate balancing act between human needs and the effects of those needs on the environment) this debate can lead to very different positions. When repairing environmental damage from the past and preventing future environmental degradation, non-anthropocentrics are likely to favour restoring or maintaining environments even when they pose potential risks to human health.\(^{87}\) For example, it is widely recognised by both sides that the restoration of natural wetlands provides protection of the hydrologic cycle and benefits environmental

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\(^{84}\) Ian MacArthur, Chartered Institute of Environmental Health Local Environmental Health Planning: Guidance for Local and National Authorities (WHO Regional Publications, European Series, No. 95, 2005).


health. However, in balancing the interests of humans and the environment non-anthropocentrics are likely to focus on full restoration and rehabilitation of animal habitats, whereas anthropocentrics are likely to plan environmental restoration around human health concerns of avoiding risks such as mosquito borne disease close to human settlements.  

However anthropocentric and non-anthropocentric based viewpoints in environmental health can clearly be reconciled. Regardless of whether environmental protection is carried out for the sake of nature or for selfish human gain, both sides agree that maintaining healthy environments is a key aim of environmental health.

2.4.3 Health Inequalities - Identification of Disadvantaged Groups to Ensure Equal Rights to Environmental Health

Basic human ethics support the notion that all people have an equal right to a clean and healthy living environment that best supports their health and well-being. Unfortunately in practice this is not always the case. There are inequalities in health and living environments across socio-economic classes, cultures, sexes, ages and across national borders as people’s access to health is affected by various constraints.

To address the inequalities in environmental health application adequately, it is important for interested parties including central and local government to acknowledge that disadvantaged parties are not one “single homogenous group.” People from lower socio-economic backgrounds, minority groups, women, children, the elderly and disabled all require assistance in obtaining access to health. These people often have little political power or protection and bear a “disproportionate share of the risks of environmental pollution”.

People of lower socio-economic background are often at the greatest risk from environmental health problems. They have less access to health care, education and

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88 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
89 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
90 DW Moeller Environmental Health (Harvard University Press, USA, 2005) at 7.
91 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
resources. Their employment often involves greater environmental health risks such as the exposure to dangerous chemicals (i.e. cleaning or chemical production) or the risk of injury through working with heavy machinery etc. They are more likely to live in overcrowded housing in poorer communities with fewer public amenities and closer to environmental health hazards such as rubbish dumps, sewerage treatment centres, power plants etc. They may suffer from problems such as malnutrition caused by insufficient food of low quality and are more likely to indulge in high risk behaviours such as smoking tobacco or drinking excessive alcohol.

The elderly must also be individually examined as a potentially at risk group. They can be dependent on others for their day to day care and are often at risk of hazards – such as falls and burns which result more from the frailty of their physical condition than their economic status. Concerns are similar when looking after the disabled. Footpaths, access ways, disabled entry to public buildings or fire exits often pose difficulties that may create direct health risks for the disabled or hinder their access to health services.

Women and children also require individual consideration. Women often bear a “disproportionate risk of exposure”\(^\text{92}\) to environmental health hazards (i.e. through domestic duties and employment) and have “unique susceptibilities”\(^\text{93}\) to things such as reproductive hazards. Young children are dependent on the care of others and are more susceptible than adults to certain environmental health risks.\(^\text{94}\) As children have less understanding and concern for health and hygiene they may inadvertently put themselves at risk by putting things in their mouths, crawling on the floor and exposing themselves to higher levels of dangerous chemicals or bacteria. Their immune systems are less developed than adults and they are more susceptible to disease. In 2002 the World Health Organisation recognised the special status of children in environmental health practice by holding the “International Conference on the Environmental Health

\(^\text{92}\) H Frumkin (ed) *Environmental Health: from Global to Local* (Jossey-Bass, A Wiley Imprint, California, USA, 2005).

\(^\text{93}\) H Frumkin (ed) *Environmental Health: from Global to Local* (Jossey-Bass, A Wiley Imprint, California, USA, 2005) at xii.

\(^\text{94}\) DW Moeller *Environmental Health* (Harvard University Press, USA, 2005) at 18.
Threats to the Health of Children: Hazards and Vulnerability” which lead to the “The Bangkok Statement,” a pledge “to protect children against environmental stresses”.95

It is important that special care is taken in environmental health practice to identify disadvantaged groups and take efficient control of their work and living environments while being sensitive to their needs and acknowledging their autonomy.96 Support must be provided so disadvantaged groups can access necessary resources and information and exercise their right to live healthy lives.

**New Zealand’s approach to Health Inequalities**

In New Zealand health, inequalities between individuals and communities are identified and taken into account in health planning and health impact assessment.97 As in other jurisdictions the main cause of health inequalities comes from the unequal distribution of resources (both health services and material resources such as housing and income). While socio-economic factors are relevant, ethnicity also contributes to health inequalities with Maori and Pacific peoples of all socio-economic levels suffering from a lower level of health than the general New Zealand population.98 These disparities in health have “widened substantially over the past twenty years”.99

The reduction of these health inequalities (which are defined as “unnecessary, avoidable and unjust” differences in health) is a key government priority.100 The Ministry of Health encourages the health sector to recognise health inequalities when working in funding, policy and the provision of services.101 In addition District Health Boards have a statutory responsibility to reduce inequalities when allocating funding and resources. Reduction of health inequalities is a key aim in various government health

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95 DW Moeller *Environmental Health* (Harvard University Press, USA, 2005) at 18.
96 Ian MacArthur, Chartered Institute of Environmental Health *Local Environmental Health Planning: Guidance for Local and National Authorities* (WHO Regional Publications, European Series, No. 95, 2005).
100 Ministry of Health *Reducing Health Inequalities for all New Zealanders* (Ministry of Health, Wellington, 2007).
101 Further detail on this is contained in Ministry of Health *Reducing Inequalities in Health* (Ministry of Health, Wellington, 2002) which sets out an intervention framework to reduce inequalities.
strategies\textsuperscript{103} with specific strategies aimed at Maori\textsuperscript{104}, Pacific peoples\textsuperscript{105} and individuals with disabilities\textsuperscript{106}.

These strategies have enjoyed some success in highlighting inequalities and redistributing resources. The Ministry of Health’s annual report for 2004/2005 stated that “inequalities between ethnic groups in suicide rate, smoking rate and infant mortality rate have reduced”.\textsuperscript{107} The total avoidable mortality rate has decreased “by about 40% from 1980 to 2002” and more people suffering from chronic disease are entering management programmes to improve the stability of their conditions. While Maori and Pacific people’s health has also improved the report concedes that inequalities still exist.\textsuperscript{108}

In addressing Maori and Pacific communities, care must be taken to encourage participation and changes in attitudes to health but at the same time to preserve the autonomy and sanctity of cultural values. Government initiatives should empower Maori and Pacific communities with knowledge and skills to implement culturally appropriate and scientifically healthy practices. By working within Maori and Pacific communities and maintaining the capacity for self-governance, communities will develop skills and local leadership which will continue on in the community after “hands on” government intervention has decreased.

A good example of this is the food safety initiatives aimed at Maori and Pacific communities launched by the New Zealand Food Safety Authority (NZFSA).\textsuperscript{109} A “Food Safety Promotion Programme for Auckland Maori”\textsuperscript{110} initiated by the food safety team of the Auckland Regional Public Health Service led to the publishing of a general guide on hangi preparation – “Food Safety: Practices in Preparing and Cooking a Hangi”. This booklet (written in Maori and English) contained information on the

\textsuperscript{103} Ministry of Health \textit{The New Zealand Health Strategy} (Ministry of Health, Wellington, 2000) and Ministry of Health \textit{The Primary Health Care Strategy} (Ministry of Health, Wellington, 2001).
\textsuperscript{104} Ministry of Health \textit{He Korowai Oranga – Maori Health Strategy} (Ministry of Health, Wellington, 2002).
\textsuperscript{105} Ministry of Health \textit{The Pacific Health and Disability Action Plan} (Ministry of Health, Wellington, 2002).
\textsuperscript{106} Ministry of Health \textit{New Zealand Disability Strategy} (Ministry of Health, Wellington, 2001).
\textsuperscript{107} Ministry of Health - media release “Revealed: progress is made in reducing inequalities in health” (Ministry of Health, Wellington, 25 October 2005).
\textsuperscript{108} Ministry of Health - media release “Revealed: progress is made in reducing inequalities in health” (Ministry of Health, Wellington, 25 October 2005).
\textsuperscript{109} Since the date of this thesis the NZFSA has been absorbed into the newly established Ministry for Primary Industries.
\textsuperscript{110} New Zealand Food Safety Authority \textit{Food Safety: Practices in Preparing and Cooking a Hangi} (New Zealand Food Safety Authority, Wellington, 2004).
safe preparation and cooking of a hangi while raising the level of awareness of food borne illnesses, focusing on food safety in the marae and maintaining the importance of kai from a tikanga Maori perspective. The booklet was formatted with reference to the Maori culture, i.e. starting with a mihi (greeting) and containing culturally appropriate pictures of hangi food and marae food preparation. The guide advised correct procedures for communal cooking, feeding large groups and storage of food on mass at outdoor events and the use of rural water supplies (typical of rural marae) in hangi preparation. The guide has been widely distributed among marae and at cultural events with the NZFSA carrying out surveys on current marae practice from March 2007 with the aim of creating and testing a final template plan by June 2008.

Following this the NZFSA, together with the Auckland Regional Public Health Services “Vaka Ola Team”, launched a guide aimed at food safety issues relevant to Pacific communities. The aim was to provide guidance on catering for large community functions, traditional cooking using umu and “home kills”. The guide was presented in several different languages and divided food hygiene into issues for small family groups, large church gatherings and cultural events. Pictures in the booklet showed food, clothes and other items related to Pacific cultures, with the NZFSA cartoon character being re-named “Foodsafe Feleti” and being depicted in traditional Pacific dress. Bio-security issues from importing umu packs from the Pacific were also addressed.

By taking into account cultural values and using public participation, programmes can be developed that encourage health promotion within the local community itself.

2.4.4 Public Participation in Environmental Health

Environmental health is maintained by professionals and elected officials who use their discretion to make decisions on behalf of the general public to maintain and promote environmental health. Public participation in the decision making processes is an

111 Raniera Bassett (NZFSA) “Domestic / Ethnic Food Safety” (paper presented to the New Zealand Institute of Environmental Health’s Annual Conference, Gisborne, 7-9 March 2007).
113 Raniera Bassett (NZFSA) “Domestic / Ethnic Food Safety” (paper presented to the New Zealand Institute of Environmental Health’s Annual Conference, Gisborne, 7-9 March 2007).
114 New Zealand Food Safety Authority Umu Pacifika: Food Safety for Pacific Peoples (New Zealand Food Safety Authority, Wellington, 2005).
important part of an effective system. This involves the rights of individuals and non-government organisations to be consulted and participate in the process.

Public participation is a core principle of health promotion practice in New Zealand. Authorities work with people to establish acceptable environmental health programmes within local communities rather than forcing programmes onto communities. In applying principles of the Treaty of Waitangi (1840), Maori communities are encouraged to have control over their own health and well-being to assist Maori to achieve their full health potential, make their own decisions and be part of the wider consultative process.115

The Local Government Act 2002 recognises the Crown’s responsibility to consider the principles of the Treaty of Waitangi and to “maintain and improve opportunities for Maori to contribute to local government decision making processes”.116 Parts two and six of the Act specifically refer to Maori participation stating that in performing its role a local authority should provide opportunities for Maori participation117 and that local authorities must “establish and maintain processes to provide opportunities for Maori to contribute”,118 foster the “development of Maori capacity to contribute”119 and provide Maori with relevant information.120

Similarly public participation by the larger community is actively sought. This is supported by the purpose of local government which includes enabling democratic decision making with action “by, and on behalf of” communities.121 Local authorities, when performing their roles, must take into account the viewpoints of their communities and those people who are affected or interested in the matter at hand.122

While experts can assess the physical health needs of a community, individuals and organisations may have their own interpretations of what is required to provide adequately for their health. Through living and working in their local communities they have practical experience in the difficulties they encounter in accessing public health

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115 Druis Barret, Ministry of Health He Tatai i te Ara, Determining the Path: Guidelines for Developing Maori Health Education Resources (Ministry of Health, Wellington, 1996).
120 Local Government Act 2002, s 81(1)(c).
121 Local Government Act 2002, s 10(a).
resources and the potential health dangers they face. If health services are created with public participation there will be greater knowledge and support for the system and a stronger likelihood of success.

While environmental health experts may have the academic knowledge to support their chosen interventions, a delicate balance must be made between “paternalism, that is, coercive leadership, and abandonment, that is, failing to give direction”. While people may be guided towards the right health choices and given information for an informed choice, ultimately their actions and choices are controlled by them through the basic right to autonomy.

Consultation and public participation is time consuming and expensive, but is essential for tailoring effective solutions for environmental health problems in individual communities.

2.4.5 Co-operation and Partnership between Bodies addressing Environmental Health

Isolated decisions and interventions are unlikely to address environmental health issues successfully, therefore an “intersectional approach” which provides co-operation and joint efforts between all interested parties is required. This partnership approach needs to be extended across all sectors, bringing together government agencies, public and private organisations, policy makers and technical and service providers at the “grass roots” of the community to tackle environmental health issues. This is time and cost effective as resources can be pooled together to address the one issue. Knowledge and resources can be shared between parties increasing the effectiveness of environmental health initiatives. Cooperation between interest groups extends into the global community as environmental health concerns are not contained by national borders. While language, heritage and cultural differences may result in differing approaches, they broaden the opportunity for wider discussion and global partnerships.
2.5 EMERGING ISSUES AND CHANGES IN ENVIRONMENTAL HEALTH

The concept of environmental health will continue to evolve and change as advances in scientific technology, new trends and values in society are recognised.

2.5.1 International / Global Character of Environmental Health

Environmental health issues cannot be constrained by national borders so environmental health issues like air pollution, water pollution and chemical hazards are a joint concern for different countries. International co-operation is a key to addressing environmental health issues effectively. The sharing of information, technology and finances between countries could provide more effective environmental health solutions and help less developed nations deal with their environmental concerns for the greater good of the global environment.

Global change is also putting pressure on environmental health and must be addressed by all nations in a co-operative approach. On a global scale the environment is being put at risk by increasing populations, climate change and the pressures of increased urbanization. Increased urbanization will intensify air, noise and industrial pollution causing further climate change from the increase in energy use warranting a response on the international scale. Increased population growth will increase the demand for resources resulting in environmental stress and resource scarcity.\textsuperscript{126}

It is imperative that nations approach this as a global issue to avoid more affluent nations using economic power to control resources and thus increasing the risk of armed conflict and political instability. Similarly, with the globalization of the economy, care must be taken so that environmental health is not sacrificed or compromised for economic gain under trade agreements.

\textsuperscript{126} H Frumkin (ed) \textit{Environmental Health: from Global to Local} (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
2.5.2 Sustainability

In 1983 the World Commission on Environment and Development was established to “propose strategies for sustainable development”.127 The Commissions 1987 report “Our Common Future” defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.128 In 1992 the Rio Declaration on Environment and Development was signed at the United Nations Conference on Environment and Development. The declaration’s first principle declared that “human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”129 In doing so the concept of environmental health has been placed at the core of sustainable development.

2.5.3 Sustainability under the Resource Management Act 1991

In New Zealand the close relationship between environmental health and sustainable management is evident in the wording of the Resource Management Act 1991. The purpose of the Act in s 5(1) is to “promote the sustainable management of natural and physical resources.”130 Section 5(2) defines sustainable management as:131

… 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, and cultural well-being and for their health and safety while-
… (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

The emphasis added above clearly shows the compatibility of environmental health concepts with sustainable management. When looking at the management of natural and physical resources, care must be taken to ensure the management proposed

127 H Frumkin (ed) Environmental Health: from Global to Local (Jossey-Bass, A Wiley Imprint, California, USA, 2005).
considers the health of the people living within the environment and accepts that loss of resources may have a negative impact on human health. Further, this need to provide resources for people in the present is balanced with the future need to safeguard the “life-supporting capacity of air, water, soil and ecosystems”,\(^\text{132}\) showing that sustainable management, like environmental health, focuses on present and future needs.

The choice of terminology – “life supporting capacity”\(^\text{133}\) – again shows a focus on preserving the environment in a manner which supports human health. While the phrase “environmental health” is not expressly mentioned in the purpose of the Resource Management Act, the phrasing of s 5 brings environmental health into practice.

Examining applications under the Resource Management Act involves consideration of Part 2, the purpose and principles contained in ss 5, 6 7 and 8 of the Act, mitigation and / or remediation of effects and an overall broad judgment as to whether or not the granting of the consent in question would promote sustainable management of natural and physical resources.\(^\text{134}\)

By virtue of the wording of s 5(2)(b) safeguarding the “life supporting capacity of air, water, soil, and ecosystems” will provide the legislative vehicle to consider the environmental health implications of proposals that may have negative impacts on key aspects of the physical environment that impact on health.

Section 43 of the Resource Management Act 1991 further acknowledges these key areas of air, water and soil control by authorizing the Governor-General, by order in Council, to make regulations prescribing national environmental standards that may prohibit, restrict or control the nature of an activity.\(^\text{135}\)

While the “sustainable management” principle does not directly state a relationship with “environmental health”, in the absence of a direct definition of “environmental


\(^{135}\) Resource Management Act 1991, s 43A.
health” in New Zealand legislation, it provides insight into the recognition of environmental health principles in practice.

The building of sustainable development concepts into the understanding of environmental health will improve living conditions across the globe and will result in an improved standard of environmental health both now and in the future.

It is important to note that there is not one set interpretation of ss 5, 6, 7 and 8. Instead, as stated by Creig J in New Zealand Rail Limited v Marlborough District Council:

“…there is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way”.

In North Shore City Council v Auckland Regional Council the court adopted a balancing of the interests using an “overall broad judgement” as to whether the purpose in s 5 (sustainable management) would be promoted with the granting of the consent. Accordingly, while there are no “overriding objectives”, any decision must promote sustainable development which is paramount. This means that “conflicting considerations” are compared to determine their “relative significance or proportion in the final outcome”.

This weighing means that different policies may be upheld depending on what best promotes s 5 and the balancing of factors in Part II for a broad overall decision. Factors that weigh directly on a decision may or not have direct environmental implications. For example in Te Runanga o Taumarere v Northland Regional Council, a case regarding a sewerage outfall, Maori spiritual concerns were “relevant and admissible” under s 6. In Becmead Investments Limited v Christchurch City Council a decision for urban rezoning was upheld on the basis that the urbanisation needs of the

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137 [1994] NZRMA 70 (HC) at 86.
139 North Shore City Council v Auckland Regional Council [997] NZRMA 59 (EC) at 94.
community were not automatically outweighed by the need to protect versatile soil under sustainable management.142

In regards to district plans, certain existing use rights are protected under s 10B143 if they were established “before the rule became operative or the proposed plan was notified”,144 or if it was “lawfully established by way of a designation”.145 Both options require the effects of the use to be similar in character and intensity.

Existing use rights are more limited when regulated at regional council level.146 If an activity becomes subject to a resource consent, the activity may continue,147 while the consent holder applies for a resource consent.148 In considering the application, the consent authority “must have regard to the value of the investment of the existing consent holder”.149

These concepts are discussed further in chapter 5, Environmental Health Functions of Central Government, when discussing the hierarchy of planning documents and its effect on resource management decisions.

2.6. CONCLUSION

The concept of environmental health has fundamentally changed the way public health is approached. Traditionally “public health” was a reactionary process of treating illness in individuals to prevent the spread of disease and death. Once the link was acknowledged between human health and the environment, public health practice made a fundamental shift. Environmental health practice has emerged in an attempt to address environmental degradation and the resulting negative impacts on human health.

142 See also Canterbury Regional Council v Selwyn District Council [1997] NZRMA 25 (EC).
146 Kenneth Palmer Local Authorities Law in New Zealand (Brookers Limited, Wellington, 2012) at 808.
147 Resource Management Act 1991, s 20A(1).
148 The consent holder has 6 months to do this from the date the plan became operative. See Resource Management Act 1992, s 20A(2).
Chapter 3 - THE HISTORY OF ENVIRONMENTAL HEALTH

The history of environmental health in New Zealand is reflected in the history of related legislation and legal theory in this area. Changes in the general public’s attitude towards health and the environment influence the values and ideologies of the time which in turn shape the direction of New Zealand’s public policy. The resulting legislation becomes a useful record of the developmental milestones of the environmental health concept. Examining the history provides useful insight into how the current environmental health framework evolved and identifies sources of policy change.

The history of New Zealand’s health system is already well documented by the government, historians and academics. This chapter will venture beyond a chronological history and focus on the various reform changes in environmental health.

International developments and changes in global perspective have also impacted on the development of environmental health. While briefly referred to here, global environmental health issues, the role of international law and the international framework will be primarily addressed in another chapter of this thesis on global perspective.

150 For example, Dow, MacLean and Wood as historians provide accounts of the New Zealand Health Department, public health in New Zealand and the role of public health in the history of early towns. See Derek A Dow Safeguarding the Public Health: A History of the New Zealand Department of Health (Victoria University Press, Wellington, 1995), Pamela Wood Dirt: Filth and Decay in a New World Arcadia (Auckland University Press, Auckland, 2005) and F S MacLean Challenge for Health: A History of Public Health in New Zealand (R E Owen, Government Printer, Wellington, 1964). More recently, the Public Health Advisory Committee has started a study called “The History of the Relationships between Public Health and Urban Planning in New Zealand: 1840’s-1990’s” which will gather historical information on the health and planning relationship.
3.1 EXAMINING THE HISTORY OF ENVIRONMENTAL HEALTH

3.1.1 The Relationship between Public Health Law, Environmental Law & Planning Law

The history of the environmental health movement involves understanding the historical development of public health law, environmental law and planning law. The public health and environmental movements were established with common origins but have separated over time due to the “different priorities and pressures on each”.151

While environmental law enjoyed a time of rapid development from the 1970s, public health law remained relatively stagnant with core environmental health provisions from the original Health Act of 1900 remaining largely intact (despite changes to the allocation of responsibility in the Health Acts of 1920 and 1956). In fact, the 1956 Health Act (together with its amendments) remains at the core of our public health framework today.

The most noticeable divergence began in the 1980s with a surge of interest in preserving the physical environment and the plethora of environmental policies, laws and standards that resulted from addressing the detrimental effects of industrialisation and increased urbanization.152 Their shared role in environmental health and the provision of healthy living conditions faded further with central government decreasing the role of the Ministry of Health in environmental health matters, while new resource management law “assumed a far greater place emphasizing urban planning and environmental protection more than human health”.153

Over time the conceptual and legal frameworks in public health began to change focus from a traditional interest in environmental health, sanitation and epidemiology towards a growing interest in the advancement of biomedical technology and the allocation and costing of medical services.

From 1990 through to today, planning trends have focused on environmentally healthy communities and safe living and working conditions. This has resulted in a

reconnection of public health law and environmental law with the resulting environmental health legal framework reflecting its multidisciplinary nature.\textsuperscript{154} However, unlike the reform of environmental law and the resulting Resource Management Act 1991, a complete overhaul and replacement of public health legislation has never occurred (bar the current Public Health Bill initiative). This explains how the current system still appears fragmented, with critical gaps and overlaps as parties struggle to reconcile current environmental law with outmoded and superseded public health law in an integrated system of environmental health.

### 3.2 ORIGINS OF ENVIRONMENTAL HEALTH – PRE 1900

This time period (prior to the establishment of New Zealand’s first Public Health Act in 1900) marked the beginning of three key developments in environmental health. The first was the recognition by policy reformers of the connection between health and environment. The second involved the acceptance of state responsibility for addressing environmental health and the third established local government control in community based environmental health.

The link between a community’s health and their environment has been recognised in various forms for centuries.\textsuperscript{155} Early efforts in Europe to contain the spread of plagues and other epidemics included quarantine acts controlling the flow of people and resources in and out of communities. However, unlike modern initiatives, early measures were largely based on controlling the spread of a recognised health problem by containment rather than proactively protecting and maintaining the quality of the environment to enhance the physical well-being of already “healthy” individuals.

#### 3.2.1 Origins in England – The Start of a Legislative Framework

The passing of the Public Health Act 1848 in England represented a key shift in the environmental health movement and marked the start of a proactive rather than reactive government commitment to environmental health. The Act laid the foundation for central government / local government’s co-operative approach (still followed today) with central government becoming a “guarantor of standards of health and


environmental quality,”\textsuperscript{156} who in turn delegated powers to local government to provide the necessary controls at the community level.

Prior to the 1848 reform, England was experiencing environmental health problems brought on during the industrial revolution of the 19th century. Populations became increasingly concentrated and urbanised which led to overcrowded, unsanitary conditions where poverty, disease, lack of nutrition and medical attention resulted in high mortality rates. Those in high socio-economic groups, who benefited from the rapid expansion of the economy, largely dismissed the deterioration of the health and living conditions of the lower socio-economic groups as being a direct result of “excessive expenditure on poor relief”\textsuperscript{157} which had led to “consequential moral turpitude that carried with it vice, crime and the seeds of ill health”.\textsuperscript{158}

From early to mid-century, as conditions continued to deteriorate, reformers such as Sir Edwin Chadwick\textsuperscript{159}, John Simon\textsuperscript{160} and William Farr\textsuperscript{161} played key roles in reassessing the existing research on public health, in urbanised England, supporting the foundation of the 1848 Act and assisting in the Acts early administration.

Epidemics were common and in 1831 the Consultative Board of Health was established following an outbreak of cholera.\textsuperscript{162} Reports of the Royal Commission on the Poor Law later led to the Poor Law Amendment Act 1834. This Act established a central department joining parish poor relief into larger organisations that acted as “forerunners of the present day local authorities”.\textsuperscript{163}

Chadwick conducted a report in 1838 that outlined in detail the extensive public health issues faced by urban centres and concluded that these environmental / physical defects in the environment (such as lack of sanitation and clean water, poor housing, air

\textsuperscript{155} Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) \textit{Environmental Health in Australia and New Zealand} (Oxford University Press, South Melbourne, 2004).
\textsuperscript{156} Christopher Hamlin & Sally Sheard “Revolutions in Public Health: 1848 and 1998” (1998) 317 (7158) BMJ 587 at 587.
\textsuperscript{157} Anon “Edwin Chadwick and the world we live in” (1990) 336(8729) The Lancet 1482.
\textsuperscript{158} Anon “Edwin Chadwick and the world we live in” (1990) 336(8729) The Lancet 1482.
\textsuperscript{159} Poor Law Commissioner on the 1832 Royal Commission on the Poor Law.
\textsuperscript{160} London’s first Medical Officer of Health under the 1848 Public Health Act.
\textsuperscript{161} Compiler of Abstracts in the General Register Office in 1837 who compiled a comprehensive statistical record of disease in the United Kingdom.
pollution and overcrowding) were the most likely sources of poor health and poverty.\textsuperscript{164} He stated that “men could live longer if they took the trouble to clear away the evils which shortened human life”\textsuperscript{165} – a uniquely preventative approach for the time period.

Chadwick’s 1838 findings in the metropolitan districts lead to his “Report on an Inquiry into the Sanitary Conditions of the Labouring Population of Great Britain”\textsuperscript{166}. For the first time a direct connection between environmental factors and public health was acknowledged. This was particularly significant as it suggested that public action and regulation could be used as a tool to provide standards that would uphold a basic standard of living and environmental concern. For example, the formation of the “Health of Town Association” in 1839 led to a select committee who recommended the implementation of building acts, sewerage acts and Boards of Health in each town.

The reforms resulting from Chadwick’s investigations, that included basic town planning and sanitation controls, were “controversial and highly political.”\textsuperscript{167} Health based reform was slow to gain momentum (even though some towns took initiative with private bylaws and appointed Medical Officers and Nuisance Inspectors). Critics of the reforms saw it as a “slippery slope” to government intervention and over-legislation where “the obvious” would be passed into law leading to an “insanity in sanity”.\textsuperscript{168}

Others feared infringement on closely guarded absolute property rights and onerous financial expense on land owners to ensure compliance with new regulations. A conflict of interest arose due to local government officials having private interests as landowners and landlords to protect. Accommodation was often tied to employment reducing the likelihood of workers making a complaint. Even the medical profession was dubious as to what role they would play in a system based on prevention rather than cure.

\textsuperscript{165} Edwin Chadwick \textit{Royal Commission Report on the Sanitary Condition of the Labouring Population of Great Britain} (United Kingdom, 1842).
\textsuperscript{166} Edwin Chadwick \textit{Report on an Inquiry into the Sanitary Conditions of the Labouring Population of Great Britain} (United Kingdom, 1842).
\textsuperscript{168} A Muntz (18 June 1847) 3rd Series 93 GBPD 750.
In reply to arguments over property rights, the concept of one’s health as an asset or property worthy of protection emerged during the Public Health Debates of 1847-1848.\textsuperscript{169} The protection of one’s health was becoming a matter of justice with Robert Slaney, a politician\textsuperscript{170}, questioning why a “poor man’s property - his health … his power to labour”\textsuperscript{171} should not enjoy the same protections under the law as afforded to the “physical property of the rich”.

Lord Morpeth, another politician largely credited with the final passing of the 1848 Act,\textsuperscript{172} supported the idea of state intervention and responsibility stating: \textsuperscript{173}

\begin{quote}
…in matters that are physical and material, matters which concern the health and life of large masses of our population … in the cases of evils which cannot be remedied otherwise that by some superintending, intervening, central authority – it would, I think, be a waste of words to attempt to prove that authority not only has a right, but that it is its duty, to interfere.
\end{quote}

After 6 years the reforms led to the establishment of England’s Public Health Act in 1848.\textsuperscript{174} Following the cementing of the environmental health movement - a long history of law founded in public health and environmental issues commenced.

In an effort to remove unsanitary conditions, England’s Public Health Act provided the basis for housing standards and town planning law including basic sewerage provision, water supply and road access. The Public Health Act established the Central Board of Health\textsuperscript{175} and issued the first powers for local and central government to order landowners and occupiers to comply with sanitation standards designed to avoid the spread of disease and infection.\textsuperscript{176} Local and central government also gained the power to regulate industrial and urban development and oversee work conditions.\textsuperscript{177}

The Nuisances Removal and Diseases Prevention Act 1855 and the Metropolis Management Act 1855 continued the role of local government management and

\textsuperscript{170} Paul Richards “R. A. Slaney, the industrial Town, and early Victorian Social Policy” (1997) 4(1) Social History 85.
\textsuperscript{171} R A Slaney (10 February 1848) 3rd Series 96 GBPD 413.
\textsuperscript{172} Aneurin Bevan “Speech to Mark the Centenary of the 1848 Public Health Act” (1948) 15 May 1948 The Medical Officer 207.
\textsuperscript{173} Lord Morpeth (30 March 1847) 3rd series 91 GBPD 623.
\textsuperscript{174} The Nuisances and Diseases Prevention Act 1848.
\textsuperscript{175} Anon “Edwin Chadwick and the world we live in” (1990) 336(8729) The Lancet 1482.
cemented the role of local authorities in inspecting for environmental health problems. Under the Acts, local authorities were required to employ “Sanitary Inspectors”\(^\text{178}\) or “Inspectors of Nuisances”\(^\text{179}\). The Sanitary Act of 1866 (following further cholera outbreaks) further developed the role of inspectors with a positive duty to actively inspect their districts for nuisances.\(^\text{180}\)

While the Central Board of Health was short-lived and the Public Health Act was too tentative by modern standards, the basic provisions established the principle of state responsibility for public health and town planning which remain core responsibilities of local government today.\(^\text{181}\)

The emergence of town planning, with the regulating of urban development and the implementation of activity zoning, complemented public health reform.\(^\text{182}\) Zoning provided a proactive rather than reactive response to environmental health by establishing an “administrative safeguard against the creation of a potential nuisance situation”\(^\text{183}\) rather than relying on “belated remedies of litigation to address an existing detrimental situation”.\(^\text{184}\) It also provided alternative statutory remedies that were not available in common law. This was an advantage as common law was not adequate to deal with general urban problems such as air pollution or water pollution. A common law claim required a clearly identified plaintiff, who suffered injury or infringement of their rights via the actions of a clearly identified defendant. It was up to the plaintiff to bring the claim, gather the evidence and incur the legal cost of having the issue addressed. Accordingly this was only effective where there was a clear identification of parties, sufficient causal connection and where a plaintiff chose to bring a claim. Often environmental health issues were affecting many people, sometimes in poorer communities, who did not have the knowledge or financial resources to bring a common law claim. If no individuals chose to act, the environmental health issues


\(^{178}\) The Nuisances Removal and Diseases Prevention Act 1855 (UK), s 9.

\(^{179}\) Metropolis Management Act 1855 (UK), s 133.


\(^{182}\) Housing and Town Planning Act 1909 (UK).


remained unaddressed. In many situations the environmental health issues were cumulative, i.e. a build up of air or water pollution in an industrial area which was caused by multiple factories, making it difficult to identify an individual defendant and prove causation.

The introduction of a statutory remedy addressed these problems and removed the burden from the individual of defending themselves from environmental health abuses and addressed environmental health issues caused by cumulative effects. As well as being proactive, and avoiding the need for an initial loss, statutory remedies further introduced the idea of “minimum standards” which was a significant development in the protection of environmental health.

3.3 HISTORY OF THE LOCAL GOVERNMENT / CENTRAL GOVERNMENT RELATIONSHIP: THE EMERGENCE OF LOCAL COMMUNITY GOVERNANCE

While public health and environmental laws have been revised and reformed they continue to retain the “essential structure of … dual responsibility” of central and local government.185

Examining the historical development of the local government / central government relationship and the delegation of powers and responsibilities will provide insight into their legal functions and practices in respect to environmental health. The roles of both local government and central government have continually been revised in an effort to “find the appropriate governing mix, balancing local autonomy against national standards and a consistent national approach to policy development”.186 The colonial origins of the relationship and the continual revising and reallocating of roles help explain why the current framework is criticised as overlapping and fragmented.

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185 Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) Environmental Health in Australia and New Zealand (Oxford University Press, South Melbourne, 2004).
The first local government structures were established in New Zealand in 1843 when the Governor enacted the Municipal Corporations Ordinance 1842 (5 Vict No 6). Influenced by local government reforms in the United Kingdom, the aim was to establish local authorities that could tailor their role to meet the needs of their individual communities (and through local taxes alleviate some of the financial burden of service provision). Accordingly, the preamble of the ordinance declared it necessary to make provision for the “good health and convenience of the inhabitants of towns and their neighbourhoods” and declared the inhabitants “best qualified” to deal with local issues due to their “more intimate knowledge of local affairs” and their “direct interest”. Powers conferred on local authorities included constructing water and sewerage systems, preventing nuisances and “all such purposes as they may deem necessary for the good order, health and convenience of the inhabitants thereof”.

According to historians these early attempts to establish local authorities were met by reluctance from the colonial administrators. While migrant communities required the provision of health and planning services (and would no doubt benefit from systems which were flexible and orientated towards local needs) the low rateable population made provision of these services at local government level too arduous. Governors feared that self-government would result in councils that failed to cope financially, becoming a “drain on the colony’s finances”.

These concerns were addressed with the Constitution Act in 1846 which aimed to provide local authorities with “as considerable a share in the number and weight of governing functions as they may be capable of sustaining”. However, implementation of the 1846 Constitution was delayed by the Governor-in-Chief George Grey who successfully petitioned for suspension of parts of the Act relating to “provincial and central assemblies.” Following the delay the New Zealand

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189 Municipal Corporations Ordinance [(1842) 5 Vict No 6 (NZ)].
190 Municipal Corporations Ordinance [(1842) 5 Vict No 6 (NZ)].
194 Constitution Act 1846.
Constitution Act 1852 replaced the 1846 Act with a “more workable plan for representative government”\(^{196}\). In 1853 the Constitution Act provided for provincial government and “six provincial legislatures”\(^{197}\) with law making powers for the “peace, order and good government of the provinces”\(^{198}\).

For the next two decades local authorities continued to form but often failed to fulfil their intended functions due to lack of resources and financial support. Low rateable populations, reluctance from councils to claim responsibility for tackling issues that would provide benefits that overlapped different council territories, lack of formal training (particularly in health related functions) and lack of supervision and support from central government continued to hinder local government success.

The provincial system was eventually abolished in 1875\(^{199}\) and replaced under The Counties Act 1876 and the Municipal Corporations Act 1876 with a fragmented system of territorial authorities, local authorities and specialised authorities with individual functions (i.e. roading etc).

Efforts to analyse and reform the current system occurred in 1932 with the formation of a committee to assess the effectiveness of local government structure and the formation of the Local Government Commission in 1946. However, it was 1960 before a report by the Local Bills Committee\(^{200}\) produced a “comprehensive political assessment of the evolution and efficiency of local government”\(^{201}\) which provided the catalyst required for substantial reform.

The reform of local government (largely driven by the Labour Government) ultimately resulted in the Local Government Act 1974. This Act, followed by the Local Government Amendment Act 1978 and the Local Government Act 1979 consolidated

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the laws relating to local government. Substantial changes followed in the 1984-1990 reform period. This was followed by the passing of the Resource Management Act in 1991 that reallocated numerous functions and responsibilities from central government to local authorities.

3.3.1 The Emergence of New Zealand’s Current Model of Local Government

Typically local government emerged out of a need for “freedom and autonomy.” In comparison, local government in a colony (like New Zealand) was more focused on the provision of services on a localised level and relieving the pressure on the newly formed central government. As it was largely driven at the national level, this explains central government’s regular revision of local government functions, powers and responsibilities. As central government stabilised and matured this resulted in a “gradual erosion of services and responsibilities away from the locality and … to the emergent state”.

This process of reallocation and splitting of functions is readily illustrated in environmental health. For example, provision of health services, while allocated and initially tackled at the local government level, was too onerous. The provision of a high quality comprehensive service was a national need. Regardless of location, people deserved the same level of health care and this could not be adequately funded at local level (taking into account population variations and lack of resources and education). While environmental initiatives benefited from the flexibility of local government control in that they could be tailored to local communities and environments, a central role was also important for imposing national standards and avoiding territorial issues where environmental hazards crossed jurisdictions.

This balancing act between “local variation” and “national uniformity” was a driving force behind the development of the local government / central government

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The resulting system embraced both concepts, creating a system where local authorities enjoyed a high level of autonomy in developing plans and bylaws based on legislative direction from central government and central government retained control over what was seen as core essential services (including health, policy, housing and welfare).

While overlaps in the core services are now seen with local government choosing to provide initiatives that address issues like housing provision for low socio-economic groups, healthy eating and exercise strategies, the contemporary local government / central government model still reflects its fragmented beginnings. Local government continues to enjoy high levels of autonomy but “low levels of service – delivery responsibilities – a low task profile”.

The model has stabilised since the last reforms during the 1980s and 1990s and the emergence of the Local Government Act 2002. However the legislative control of central government continues to give it significant scope over local government.

New Zealand is now becoming comfortable with the fragmentation of the framework and is utilizing its advantages by making decisions at the “appropriate level” – local, regional or national. While central government continues to set the scope of power and responsibility for local government this is now seen by some as the working of “two spheres of a system of collective decision making” rather than criticised for a lack of planning and initiative (as in the formative stages of the relationship). For example, under the Health Act 1956 specific functions are delegated to local government for implementation.

The centralization of control of core services, coupled with the need at local level for implementation, has led to a unique overlap of functions between central and local government. Environmental health related issues like health protection, town planning, environmental management, water supply, sanitation, refuse and environmental

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protection are characterised as local government activities and yet central government continues an “active interest” via legislation (i.e. specific national standards) or “parallel interest” through government agencies.\(^{211}\)

This cooperative relationship explains the ability of local authorities to extend their interest into core services when addressing their individual community’s needs. The ability of councils to “move outside the statutory mandated functions to meet community demands”\(^ {212}\) is an important characteristic of the relationship.

Early notions of this were demonstrated in the passing of The Town and Country Planning Act 1977. The Act outlined local government responsibilities based on a purpose of effectively promoting and safeguarding “the health, safety, convenience, and the economic, cultural, social, and general welfare of the people, and the amenities, of every part of the region, district or area”.\(^ {213}\) The Act provided for council planning to address and promote community welfare.

At local government level, promoting and safeguarding environmental health, was seen as “a ‘backroom’ function stealthily loading work onto local bodies”.\(^ {214}\) Following The Town and Country Planning Act 1977, the Board of Health produced a booklet titled “Health Responsibilities of Local Government” in 1980 that scheduled further legislative obligations.\(^ {215}\) The Resource Management Act 1991 again confirmed the position.

This changing flexibility in the role of local government (particularly in regards to environmental health) was further enhanced with the passing of the Local Government Act 2002. Section 10(b) of the Act states the purpose of local government, being:\(^ {216}\)

“(b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.”

This new purpose allowed local government to break free of traditional attitudes towards their role and embrace a broader range of initiatives. Councils could now rely

\(^{213}\) Town and Country Planning Act 1977, s 4(1).
\(^{216}\) Local Government Act 2002, s 10(b) (subject to amendment in 2012).
on this legislative mandate to allow them to take more active roles in environmental health and encourage community governance. Broader initiatives could be designed under the general premise of promoting the well-being of their local community. In recent years the greater autonomy and “increased capacity and scope”\textsuperscript{217} has resulted in further community tailored initiatives.

The current functions and framework of both local government and central government is discussed further in later chapters of this thesis.\textsuperscript{218}

### 3.3.2 Summary

In summary the relationship of local government / central government in New Zealand is unique. Local government operates with a high level of autonomy and discretion to achieve a broad purpose of “well-being”, but with a shared level of responsibility. However core services, like health, remain a central government priority.

The history of the local government / central government relationship means that we have effectively centralised some aspects of environmental health and localised other aspects. Once local government had failed in the provision of essential health functions (largely through lack of funding, resources and specialised education) the responsibility for health was placed back with central government.\textsuperscript{219}

Local government continued in their planning roles and in addressing environmental health issues in their local environment like sanitation, nuisances, water supply and food safety. This split of environmental health functions between central and local government continues to this present day. Many joint projects between councils, health boards and non-government organisations have been initiated in an attempt to provide a collaborative approach to environmental health issues. While reallocation of functions has occurred, this historical split explains the fragmentation of the current system and some of the issues that arise when initiating a cooperative environmental health response.


\textsuperscript{218} See Chapter 5, Environmental Health Functions of Central Government, Chapter 6, Environmental Health Functions of Local Government and Chapter 7, Critical Analysis of Central and Local Governments’ Environmental Health Functions.

\textsuperscript{219} Hospitals Amendment Act 1951 (local hospital rating to cease within 5 years); Hospitals Act 1957 (government taking responsibility for fully funding hospitals).
3.4 ORIGINS OF ENVIRONMENTAL HEALTH IN NEW ZEALAND

3.4.1 Before the Public Health Act 1900 – the beginning of New Zealand’s framework

New Zealand, being heavily influenced by England’s experience, also adopted public health and planning laws. However, the evolution of public health law in New Zealand and the underlying factors leading to the environmental health movement were slightly different from the English experience – though New Zealand still experienced problems sufficient to prompt “sanitation inquiries”. This was partly due to urbanization problems not being as intense as in England (due to the colonial nature of New Zealand with many cities still in the early stages of development at this time).

The population mix of New Zealand – the Maori indigenous population together with a growing number of immigrant settlers - also provided unique environmental health challenges. Even the traditional local government / central government relationship established in the United Kingdom was initially difficult to implement in New Zealand. With low populations in settlements, property rates were not an efficient method to fund local government responsibilities and remote, isolated settlements with unreliable communication, hindered centralised supervision of local bodies.

Notwithstanding these differences, New Zealand’s environmental health law underwent a similar transformation as the United Kingdom, with focus moving from quarantine (isolating and containing ill health) to vaccination and health services (prevention and treatment of ill health), through to sanitation and town planning (promoting and maintaining good health).

New Zealand’s earliest health and environment related provisions related to harbour masters and their quarantine rights over ships in 1842 and in general our early health care system and legislation for colonial settlers was based on the English model from the 1848 Public Health Act. Accordingly, responsibility for offering health care was

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222 While the rights first applied over Auckland this was soon extended to the whole colony after the 11th of April 1856. F S MacLean Challenge for Health: A History of Public Health in New Zealand (R E Owen, Government Printer, Wellington, 1964) at 11.
localised and shared between local government, charity and private medical practitioners.  

In 1861 the Otago gold rush, together with outbreaks of small pox in other concentrated population areas like Auckland and Wellington, highlighted the increasing need for sanitation control in settlements. While compulsory vaccination provisions followed in 1863, these events had provided the stimulus for the Public Health Act 1872 that is credited as New Zealand’s “first attempt to organise any general system of public health”.

The 1872 Act established a central board of health in each province with local authorities becoming local boards of health for their respective areas. The local boards of health were allocated various powers to control sanitation, nuisances and offensive trades and contain infectious diseases. The province based boards were centralised on a national scale with the passing of a new Public Health Act in 1876. While this Act endured until the Public Health Act of 1900, it was “largely criticised by academics as failing to initiate any public health policy”.

The shared responsibility for services, the lack of guidance and supervision from central government and the lack of health related expertise in planning, largely hindered the early development of legislation and reform. For example, it was not until the end of the 19th century and the establishment of the Department of Public Health that Medical Officers were appointed with special training.

Public hospitals were established by local districts and voluntary organisations. Some were provided with full government assistance while others were voluntary with

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223 European Observatory on Health Care Systems Health Care Systems in Transition: New Zealand (European Observatory on Health Care Systems, Copenhagen, Denmark, 2001) at 23.
224 The compulsory aspect of the 1863 Vaccination Act was later removed in the 1871 Act in favour of granting powers to public vaccinators to vaccinate any unvaccinated children in state funded education.
228 F S MacLean Challenge for Health: A History of Public Health in New Zealand (R E Owen, Government Printer, Wellington, 1964) at 12.
minimal government assistance. With no nationalised control on health funding or spending, some areas struggled for support. While legislation permitted the establishment of hospital districts funded by rating controlled by local authorities, the support was limited. By the 1880s the government centralised the funding of all hospitals. Public Health Boards were established under the Hospitals and Charitable Institutions Act 1885.  

The first real “national response” to a health concern in New Zealand occurred around 1900 with the threat of the bubonic plague. Interestingly, as well as using quarantine measures and preparing medical treatment (in case of infection), extensive environmental health measures were also put in place. The Central Board of Health instructed local authorities to clean up refuse, check sanitation and safeguard water supplies. In addition, sanitary commissioners checked ports and made prevention recommendations resulting in the Bubonic Plague Prevention Act 1900. Like the Sanitation Act in England following cholera outbreaks, and the appointment of nuisance inspectors, the Plague Act was a trigger point for local government to assess their physical environment and activities in an effort to reduce health risks posed by the spread of disease. While it was now understood that the environment could be controlled to prevent ill health, it was not until the latter part of the 20th century that ideas shifted to controlling environmental aspects to improve health conditions in already healthy communities.

By governor’s declaration the Plague Act would come into force in a district giving the Governor all the powers conferred on local Boards of Health (in the Public Health Act 1876) and on local authorities (in the Counties Act and Municipal Corporations Act 1876). On top of this a “full and absolute power” was conferred for the governor to “direct, require and enforce any matter which in his absolute discretion he thinks expedient in order to promptly and efficiently deal with the Bubonic Plague”.

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232 See also the Epidemic Preparedness Act 2006 as a contemporary comparison.
233 Bubonic Plague Prevention Act 1900, para 37.
3.4.2 The Public Health Act 1900 and the early century

The Plague Act was repealed in the same year with New Zealand’s first consolidated Public Health Act in 1900 (which still adopted the general structure of England’s Public Health Act). The Public Health Act of 1900 established a Department of Public Health\textsuperscript{234} to oversee the general public’s health, created the role of Chief Health Officer (below the Minister of Health) and appointed general practitioners as Local District Health Officers.\textsuperscript{235}

Establishing a Department of Health was supposed to address the issues of “divided authority” between central and local government that arose under the previous ad hoc system where health officer’s recommendations often gave way to rate payer pressure when it came to implementation at the local level. The Act provided the central government intervention required to “curtail the autonomy” of local government in health and reduce the pressure effect of ratepayers reluctant to increase rates spending and have their property rights infringed by environmental health controls.\textsuperscript{236}

The Act established health districts (while maintaining local authorities as the “responsible public health authorities in their respective districts”\textsuperscript{237}) and charged the District Health Officer with advising local authorities in “health matters”. While the role was advisory in nature, “serious omissions” in health could be reported to the Chief Health Officer who was “further empowered” to ensure local authorities attended to any environmental health issues.\textsuperscript{238}

Between the Public Health Act 1900 and the Public Health Act of 1920 local authorities continued to multiply in order to deal with the planning and environmental health pressures of urban development. Following the 1900 Act public health reformers

\textsuperscript{234} The Department of Public Health was renamed the Department of Public Health, Hospitals and Charitable Institutions in 1909 and again renamed as the Department of Health under the Health Act 1920 and then replaced with the Ministry of Health in 1993. See Derek A Dow \textit{Safeguarding the Public Health: A History of the New Zealand Department of Health} (Victoria University Press, Wellington, 1995) for further detail.

\textsuperscript{235} \textit{Royal Commission on Social Policy} (1988) at 44.

\textsuperscript{236} F S MacLean \textit{Challenge for Health: A History of Public Health in New Zealand} (R E Owen, Government Printer, Wellington, 1964) at 16.

\textsuperscript{237} F S MacLean \textit{Challenge for Health: A History of Public Health in New Zealand} (R E Owen, Government Printer, Wellington, 1964) at 16.

\textsuperscript{238} F S MacLean \textit{Challenge for Health: A History of Public Health in New Zealand} (R E Owen, Government Printer, Wellington, 1964) at 16.
introduced controls on food and drugs but the level of interest in reform decreased towards the 1920s.\textsuperscript{239}

While the Health Act of 1920 made significant amendments to the responsibilities of the Department of Health and local authorities, the environmental health provisions remained intact.\textsuperscript{240}

3.5 DEVELOPMENT OF ENVIRONMENTAL HEALTH – LEADING TO THE PUBLIC HEALTH ACT 1956 (CURRENT ACT)

3.5.1 1930s (Nationalization of the Health Care System)

The first Labour Government in the 1930s made major changes in the provision of health care services leading to a nationalization of the health care system in an attempt to address the uneven development and patchwork of participants in the health service. While their Social Securities Act 1938 established a central funded and managed model of health it was not a complete replacement of the existing health framework. The Labour Government had aimed to create a national fully funded health system, however the emerging system was a “compromise between the government and the medical profession and led to the creation of the contemporary ‘public’ health system.”\textsuperscript{241}

While not strictly an issue of environmental health, the nationalization of the health system showed a change in health provision from the piecemeal approach. Following nationalization, the health care system became predominately tax funded through central government (rather than through rating at local government level) with full responsibility for hospital funding shifting to central government in the 1950s.\textsuperscript{242}

\textsuperscript{239} Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) \textit{Environmental Health in Australia and New Zealand} (Oxford University Press, South Melbourne, 2004).

\textsuperscript{240} Health Act 1920.

\textsuperscript{241} Robin Gauld \textit{Revolving Doors: New Zealand’s Health Reforms} (Institute of Policy Studies and Health Services Research Centre, Victoria University of Wellington, Wellington, 2003) at 3.

\textsuperscript{242} Hospitals Amendment Act 1951 (planned to cease local rating for health care) and Hospital Act 1957 (funding for Hospitals became full government responsibility).
3.5.2 1950s & 1960s (Introduction of the Health Act 1956 – the present core health legislation)

During the 1950s public health legislation was supplemented with town planning. The most important environmental health achievement during this time was the passing of the Health Act 1956 and the environmental health functions that were derived from the Act. The Act was a major “re-haul” and consolidation of current public health law and the environmental health functions in the Act still remain largely intact today (albeit with amendments). Accordingly, as the Act is still currently used, a full analysis of the legislation will be provided while looking at the current legislative framework – however the basic milestones for environmental health are examined below.

The Act confirmed the continued role of the Department of Health (headed by a Minister of Health) and the Board of Health gave power to the Governor-General to establish Health Districts and introduced Medical Officers of Health. Under the Act the “principal functions” of the Department of Health included administering acts related to the “promotion or conservation of health,” advising local authorities in public health matters, limiting the spread of disease, carrying out investigations and generally taking “all such steps as may be desirable to secure the preparation, effective carrying out, and co-ordination of measures conducive to the public health”.

At local government level, s 23 of the Act conferred general powers and duties (in respect of public health) on local authorities. Local authorities were directed to “promote and conserve” public health in their district and were empowered to appoint inspectors and create bylaws to achieve their goals.

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244 Health Act 1956, s 4.
245 Health Act 1956, s 11.
246 Health Act 1956, s 19.
247 Health Act 1956, s 6A.
248 Health Act 1956, s 7.
249 Health Act 1956, s 7(a).
250 Health Act 1956, s 7(g).
251 Health Act 1956, s 23.
252 Health Act 1956, ss 23, 24, 28 and 64.
Section 23(b) gave local authorities positive environmental health duties by requiring local authorities to inspect their districts.\textsuperscript{253}

...for the purpose of ascertaining if any nuisances, or any conditions likely to be injurious to health or offensive, exist in the district.

And under 23(c):\textsuperscript{254}

If satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition.

Environmental health concerns such as refuse, sanitation, building and pollution of waterways were all brought under regulation.\textsuperscript{255} The bylaw making powers\textsuperscript{256} of local government were extensive and included “conserving public health”\textsuperscript{257}, dealing with nuisances, providing healthy building standards, drainage and sewerage, cleansing buildings, preventing food and water contamination and general bylaw making powers “for the more effective carrying out of any of the provisions”\textsuperscript{258} of the Act.

Today the use of the Public Health Act 1956 is heavily criticised. The Act is seen as archaic, inflexible and unable to work with current environmental and health provisions due to it being based on outmoded assumptions. However, in its time, the Health Act 1956 was a major turning point in the carrying out of environmental health functions at both central and local government levels.

The recognition of basic environmental health legislation following on from the Health Act 1956 into the 1960s was “sufficient to regulate and provide planned direction for the expansion of city populations”.\textsuperscript{259} As discussed in Chapter 2- Meaning and Importance of Environmental Health, the 1960s provided a turning point in environmental health with human health being placed within the larger health of the environment.\textsuperscript{260} This went beyond the notion of poor health resulting from a poor

\textsuperscript{253} Health Act 1956, s 23(b).
\textsuperscript{254} Health Act 1956, s 23(c).
\textsuperscript{255} Health Act 1956.
\textsuperscript{256} Health Act 1956, s 64.
\textsuperscript{257} Health Act 1956, s 64(a).
\textsuperscript{258} Health Act 1956, s 64(y).
environment to acknowledge the intrinsic link between human health and the environment and the integration of ecology with human health.

3.6 A PERIOD OF CHANGE & DEVELOPMENT IN THE CONCEPT OF ENVIRONMENTAL HEALTH

3.6.1 1970s & 1980s (growth of environmental law)

The 1970s presented a time of rapid change in environmental law reform and can be described as the “foundation laying years for environmental law.” Policy makers conceded that regulation and protection of the physical environment via the law was necessary to “safeguard the quality of human and ecological existence.” New scientific findings and epidemiological research were highlighting the growing issues of unsustainable populations and the direct effects of pollutants on human health. The shortcomings in existing environmental protection measures were becoming undeniable.

The 1972 Stockholm conference of World Nations set the scene for the changing face of environmental law. The conference focused on pollution issues and concluded that preservation of the natural environment was necessary for improved living conditions. The adaptation should come not from the environment, but from a change in “human activities to be compatible with environmental principles”. The resulting declaration emphasised the importance of solving environmental problems while simultaneously addressing “social, economic and development factors.”

In 1972 New Zealand introduced pollution controls starting with clean air controls (implemented by the Department of Health) loosely based on the United Kingdom model. This was followed by the introduction of environmental impact assessments in the same year, together with the establishment of the Commission for the Environment.

The use of environmental impact statements\textsuperscript{265} for major developments provided another milestone in the history of environmental health.

The tool provided for environmental impacts to be researched and assessed prior to approval of major developments. These impact assessments were audited by the Commissioner for the Environment. In doing so a preventative approach was taken rather than a reactionary approach. The use of assessment tools at both a policy and project level was continued in latter years with the development of health impact assessments. Health impact assessments (in contrast to environmental impact assessments) aim to “predict the potential effects of policies on health and well-being, and on health inequalities.”\textsuperscript{266} Health impact assessments have been carried out on the project level within the resource management process since 1995.\textsuperscript{267} In 2005 with the publication of the second edition of the Public Health Advisory Committee’s “Guide to Health Impact Assessment”\textsuperscript{268} the use of health impact assessments in policy making was still rare.

While health impact assessment will be discussed further in chapters on current local and central government functions, the development of the two forms of impact assessment demonstrate a changing attitude with developments needing to be compatible with the best interests of health and the environment, rather than changes being made in other sectors to tolerate the impact of development.

It was during the 1970s that the separation between public health law and environmental law (as discussed earlier) became most apparent with New Zealand starting to pass comprehensive environmental legislation while health legislation lagged behind, still deeply rooted in the Health Act 1956.\textsuperscript{269} Up until this point public health and environmental law were “inseparable concepts” with soil and water quality seen as public health issues under the Health Act (and resulting regulations).\textsuperscript{270}

\textsuperscript{265} National Development Act 1979 (repealed in 1986).
\textsuperscript{266} Public Health Advisory Committee \textit{A Guide to Health Impact Assessment: A Policy Tool for New Zealand} (2\textsuperscript{nd} edition, Public Health Advisory Committee, Wellington, 2005).
\textsuperscript{268} Public Health Advisory Committee \textit{A Guide to Health Impact Assessment: A Policy Tool for New Zealand} (2\textsuperscript{nd} edition, Public Health Advisory Committee, Wellington, 2005).
\textsuperscript{269} Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) \textit{Environmental Health in Australia and New Zealand} (Oxford University Press, South Melbourne, 2004) at 171.
\textsuperscript{270} Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) \textit{Environmental Health in Australia and New Zealand} (Oxford University Press, South Melbourne, 2004) at 171.
While legislative reform in health lagged behind, a review by the Department of Health in 1974\textsuperscript{271} finally raised concern about the fragmented way health services had developed in New Zealand. The reform proposals of the 1975 Labour Government and the establishment of a “Special Advisory Committee” on health service organisation resulted in the change from Hospital Boards to Area Health Boards.\textsuperscript{272} These local boards aimed to plan and manage delivery of health services in their locality.\textsuperscript{273}

This shift to a more devolved structure with greater autonomy continued into the 1980s. The centralization of the health sector of the 1930s was largely reversed with regionalised service provision.\textsuperscript{274} However, central government via the Department of Health retained responsibility.

A movement began in embracing environmental health principles in an effort to prevent ill health. Food, drugs and tobacco underwent their most extensive reform since the establishment of early legislation in the 1920s. Much of the reform focused on the need to update the law and standardise food laws between New Zealand and Australia\textsuperscript{275} for improved “quality and safety”.\textsuperscript{276}

The growth of global initiatives continued with the Bruntland Commission in 1987 on “Our Common Future” that continued the early sentiments of the Stockholm Declaration for global policy based on sustainable development.\textsuperscript{277} The United Nations was beginning to focus on ecological well-being and the link to environmental health.

The passing of the Environment Act 1986 and the Conservation Act 1987 continued the strong focus on environmental reform. These Acts established the Ministry for the Environment\textsuperscript{278}, Parliamentary Commissioner for the Environment\textsuperscript{279} and Department

\begin{footnotesize}
\textsuperscript{271} Department of Health \textit{A Health Service for New Zealand} (Department of Health, Wellington, 1974).
\textsuperscript{272} Area Health Boards Act 1983.
\textsuperscript{273} European Observatory on Health Care Systems \textit{Health Care Systems in Transition: New Zealand} (European Observatory on Health Care Systems, Copenhagen, Denmark, 2001).
\textsuperscript{274} Robin Gauld \textit{Revolving Doors: New Zealand’s Health Reforms} (Institute of Policy Studies and Health Services Research Centre, Victoria University of Wellington, Wellington, 2003).
\textsuperscript{275} Food Standards Australia, New Zealand Act 1991.
\textsuperscript{276} Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) \textit{Environmental Health in Australia and New Zealand} (Oxford University Press, South Melbourne, 2004) at 169.
\textsuperscript{278} Environment Act 1986, s 28.
\textsuperscript{279} Environment Act 1986, s 4.
\end{footnotesize}
of Conservation. 280 The Commissioners functions included “maintaining and improving the quality of the environment” through reviewing the “systems of agencies and processes established by the government”. 281 This included the ability to “investigate the effectiveness of environmental planning and environmental management carried out by public authorities”. 282 In carrying out their functions the Commission had to have regard to the matters in s 17 of the Act, which included “the effects on communities of people”. 283 “Complementary powers” awarded to the Ministry for the Environment allowed the Ministry to provide advice on policies and on the operation of legislation. 284 Environmental health related issues that were identified “included the maintenance and restoration of ecosystems … effects on communities of people, pollution increases and hazardous substances.” 285

3.6.2 1990s (Fundamental change in environmental law with the Resource Management Act 1991 and the Health Reforms)

Towards the end of the 1980s environmental law reformers were aiming towards the integration of all environmental legislation. After extensive review the Resource Management Act 1991 was passed. While the Resource Management Act is arguably at “the core of public and environmental health legislation” 286 it has also been criticised for being administered from an environmental angle with “little formal input from areas of public health” furthering the “split” between the two areas. 287 A further noticeable difference was the lack of a core centralised theme in public health law, which was achieved in the Resource Management Act through the focus on “sustainability”.

Consequently the Act is far more “sophisticated” than the Health Act legislation it interacts with. In fact health and well-being are barely mentioned, even though the Act

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281 Environment Act 1986, s 16(a).
282 Environment Act 1986, s 16(b).
283 Environment Act 1986, s 17(d).
287 Nancy Cromar, Scott Cameron & Howard Fallowfield (eds) Environmental Health in Australia and New Zealand (Oxford University Press, South Melbourne, 2004) at 171.
regulates areas with major environmental health implications (i.e. environmental hazards, sanitation infrastructure, planning healthy environments). 288

The Resource Management Act continued to reshape the local government / central government relationship. The Act moved from a “prescriptive approach” to a “balancing approach” looking at multiple outcomes. The task of “balancing” was allocated to local government, while central government continued to control legislation and provide “policies, standards and information”. 289 The Resource Management Act will be discussed further in later chapters as a current piece of legislation.

Health reforms in the 1990s 290 bought extensive change to the health system including the establishment of four regional health authorities 291, Public Health Commission, National Advisory Committee on Core Health and Disability Support Services, conversion of Health Boards to Crown Health Enterprises 292 and a name change for the Department of Health to the Ministry of Health. However, these changes were administrative – mainly changes to management and service delivery - and had no real impact on environmental health functions.

3.6.3 2000 and Beyond (The Local Government Act 2002 & Health Strategy)

The Local Government Act 2002 continued to advance local government’s role in environmental health. Environmental health responsibilities and powers under the Act include the ability for local government to improve the local environment, set strategic policy direction, administer responsibilities under law and regulations (i.e. Building Act, Food Regulations) and regulate local nuisances.

Following the consolidation of planning and environmental law in the Resource Management Act 1991 and the updating of local government powers and responsibilities in the Local Government Act 2002, environmental health reform experienced another substantial shift. Most noticeable was the re-established importance of regional governance with a focus on community orientated

290 There were four major health reforms occurring in 1991, 1993, 1996 and 1999 – however none were significant to the history of environmental health.
291 These were abolished in 1997 and replaced by a single body – the Transitional Health Authority.
292 These were later converted to Hospital and Health Services.
environmental health initiatives. While enforcement remains a key mechanism for central and local government, a new focus on education and community responsibility emerged.

The Labour / Alliance coalition government of 1999 enacted a “health programme” under the New Zealand Public Health and Disability Act 2000 leading to another reorganisation of the health sector. Regional governance was strongly re-established with the formation of District Health Boards.293

In December 2000 the Ministry of Health launched “The New Zealand Health Strategy”.294 The intention of the strategy was to identify key health issues and develop a corresponding “framework of action.”295 The strategy included seven fundamental principles and 10 broad goals. Of the fundamental principles, those related to environmental health include –

- “Good health and well-being of New Zealanders throughout their lives”
- “An improvement in health status of those currently disadvantaged”
- “Collaborative health promotion and disease and injury prevention by all sectors”.296

The broad goals related to environmental health include –

- “A healthy social environment”
- “Reducing Inequalities”
- “Maori development in health”
- “A healthy physical environment”
- “Healthy communities, families and individuals”
- “Healthy lifestyles”.297

Since 2000 and the creation of “healthy living” and “healthy city” programmes, local government is getting increasingly involved in environmental health issues and their functions (as seen in later chapters) are evolving accordingly.

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295 European Observatory on Health Care Systems Health Care Systems in Transition: New Zealand (European Observatory on Health Care Systems, Copenhagen, Denmark, 2001) at 5.
3.7 SUMMARY / CONCLUSION

Throughout history there have been many trigger points for change in environmental health law, the most significant being a change from a reactionary system to a proactive system. However, a key question is difficult to answer – when did the environmental health framework become fully proactive in New Zealand? Were the early plague provisions proactively promoting environmental health or merely preventing the spread of disease? Some would argue the system made this key development in later years with strategy planning and the use of health impact assessments. There is no doubt that this is where environmental health really gained momentum, however, when looking at the history as a whole it appears to have been a slow development where no single event can be pinpointed.

The framework of environmental and health based legislation continues to expand to address new issues in biosecurity, hazardous substances and new organisms, building and housing, drinking water, food safety, occupational health and safety, waste management, air quality and climate change.

Regardless of when the transition actually took place, the challenge for environmental health reformers is to create an integrated, proactive framework that actively protects and promotes environmental health while addressing the balancing roles between local and central government.
Examining environmental health from a global perspective provides important insights into the New Zealand context and the influences of international law. This chapter will examine global environmental health issues, review the role of international law in providing for environmental health and consider the impact of international law on New Zealand’s domestic law and policy.

4.1 THE GLOBAL NATURE OF ENVIRONMENTAL HEALTH ISSUES

Traditionally environmental health has been recognised and dealt with as a local issue with a focus on containing hazards and responding at the local government level with central government delegated powers, funding or direction. For example, in New Zealand the Health Act 1956 requires local authorities to inspect their district for nuisances or conditions “likely to be injurious to health.”\(^{298}\) If nuisances are found then local authorities are to take “all proper steps”\(^{299}\) to ensure the nuisance is resolved. To aid in the execution of their duties local authorities are also delegated bylaw making powers by central government to make bylaws aimed at “conserving public health, and preventing or abating nuisances”\(^{300}\).

If large volumes of smoke from factories in an industrial area were emanating into a neighbouring residential area (creating health and respiratory issues in the community) this may constitute a nuisance. The local authority could examine the situation and look at the emission method and volumes of the factories located in the industrial area.

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298 Public Health Act 1956, s 23(b).
299 Public Health Act 1956, s 23(c).
with a view to introducing bylaws that reduce emissions and therefore reduce the associated negative health effects. As well as serving notices on individual factories the local authorities could introduce standards for factories operating within the area. While this solution appears simple, the matter may be more complicated if the polluter (industrial factory) and polluted (affected residents) are not controlled under the same jurisdiction.

Matters are complicated further when this matter is considered from a global perspective where one country may be emitting the air pollution while a neighbouring country suffers the negative environmental health effects. This was demonstrated in the 

*Trail Smelter Arbitration (Canada v United States)*$^{301}$ where toxic sulphur dioxide fumes from a zinc and lead smelter in Canada allegedly caused environmental damage across the Canadian / United States border in the State of Washington.$^{302}$ While (under state sovereignty) “no state has the right to intervene in the internal or external affairs of another”$^{303}$ the International Arbitral Tribunal handling the case applied both United States law and international law$^{304}$, the latter of which included “accepted principles” of international law “which allow states and individuals to seek redress for pollution or environmental degradation emanating from a neighbouring state”.$^{305}$ The Tribunal found for the United States and concluded that:$^{306}$

> No state has the right to use or permit the use of its territory in such a manner as to cause injury … to the territory of another or the property or the persons therein.

This principle demonstrated an early application of international environmental law and was later reinforced in 1972 in Principle 21 of the Stockholm Declaration$^{307}$ (which will be discussed further on in this chapter).

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300 Public Health Act 1956, s 23(c).

301 (1938 and 1941) 3 RIAA 1905.

302 United States v Canada (1938 and 1941) 3 RIAA 1905.


304 Alex Conte *An Introduction to International Law* (LexisNexis NZ Ltd, Wellington, 2006) at 16.


Issues such as air pollution demonstrate the reality that environmental problems are not constrained by national borders.Environmental health threats are increasingly effecting people across political and economic boundaries and they are difficult to solve by intervention on a regional level due to their wide distribution. Accordingly, efforts to address, maintain and improve environmental health conditions must also take on a global dimension with international and interdisciplinary responses.

4.1.1 The Emerging Recognition of Global Environmental Health Issues

Where initial environmental health measures are locally based, “global thinking” will always be an important part of implementing any measures in a “real world” scale. While autonomy and self-governance are important and allow for tailored and flexible decision making, a globalised body is crucial for meeting global environmental needs. Growing interdependence between states further confirms that a globalised approach to environmental health is the obvious choice.

The 20th century witnessed ‘health revolution’ with advances in medical technology, epidemiology and environmental monitoring. However, these positives must be contrasted with the stark reality that the health revolution has not been uniformly received across the globe with many countries still struggling with environmental health issues. Recognition of this point and addressing of the issues on a global scale is required if environmental health reform is going to advance. As noted by Gro Harlem Brundtland:

Global leadership and advocacy for health remain critical missing ingredients in the formula for making a difference.

Originally the global nature of environmental health was reflected in compensation cases for environmental damage (as in the Trail Smelter Arbitration) rather than in

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312 United States v Canada (1938 and 1941) 3 RIAA 1905.
global efforts to reduce environmental harm voluntarily. Typically global issues only arose where conflict arose between different countries’ activities and the resulting effects on others. This was largely an argument based around state sovereignty. Occasionally countries would suffer from environmental disasters that had wide ranging environmental health effects on neighbouring countries. The sudden and widespread harm of these events often drove home the interconnection of states via an undividable natural environment.

The “Seveso disaster” in Italy in 1976 involved an industrial accident in a chemical manufacturing plant where extremely high concentrations of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) were released resulting in contamination of soil, vegetation and animals. The Government ordered emergency actions (such as slaughtering of livestock) to prevent TCDD entering the food chain. In 1984 a pesticide plant in Bhopal, India released 42 tonnes of toxic methyl isocyanate (MIC) gas, again contaminating food resources and causing thousands of deaths from initial exposure and gas related diseases. The “Chernobyl disaster” in the Ukraine occurred a few years later in 1986. A damaged reactor at a Nuclear power plant emitted a plume of highly radioactive fallout killing thousands and resulting in an increase in cancer related deaths in the effected population.

The close proximity of these disasters to neighbouring states (and the social and economic harm that resulted) increased the demand for international regulation of the environment to prevent environmental damage and risks to human health.

While environmental disasters provided immediate drive for global response it was the discovery of the hole in the ozone layer in the 1970s and the accumulation of green house gases in the 1980s that highlighted the fact that “human-induced” changes in the environment would lead to impacts on human health. A new type of environmental health problem was emerging – a human induced overloading of the natural environments ability to absorb waste. Previously the assumption that “dilution is the answer to pollution” resulted in the shifting of waste from the local environment

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(where it was produced) to off shore. The ozone hole and global warming demonstrated that the redistribution of waste did little to combat the environmental health issues resulting from living in a global environment with “finite limits”.315

The fragility of the global environment and the recognition that natural resources were finite demonstrated that careful environmental planning on a global scale would be needed to maintain quality of life. Three main global health concerns were becoming increasingly apparent – population growth, poverty and pollution.316 When these areas were examined further, problems in basic environmental health – food safety, water supply, air pollution, land contamination and poor working and living environments – were becoming increasing apparent on a global scale.317 Localised responses were no longer solving issues as the local environment exhibited the effects of global pollution. The scale of environmental health issues required complicated research, technology and planning frameworks which were either beyond the capacity of individual states or time consuming and ineffective when only locally applied.

The acceptance of “global forces” in environmental health issues (such as population pressure and increased urbanization) was soon reflected in international instruments recognizing the global need for environmental protection and accepting the intrinsic link between environment health and human health.

4.2 KEY INTERNATIONAL INSTRUMENTS FOR A GLOBAL ENVIRONMENTAL HEALTH FRAMEWORK

International agreements demonstrate co-operation between states and a willingness to synchronise responses to environmental health issues. While agreements alone may be insufficient to create change without voluntary efforts by states they do provide the basis for an international framework.

Since the 1970s there has been an increase in global interest in both health and the environment. These agreements can loosely be categorised as contributing to a health based framework (such as the Declaration of Alma-Ata$^{318}$ or the Ottawa Charter$^{319}$), an environment based framework (such as the Stockholm Declaration$^{320}$, Rio Declaration$^{321}$ or Kyoto Protocol$^{322}$) or (as is the recent trend) to a holistic framework combining the health of the environment with human health (i.e. the Earth Charter$^{323}$).

4.2.1 Health Based Frameworks

4.2.1.1 The Declaration of Alma-Ata

In 1978 the World Health Organisation (WHO) and United Nations International Children’s Emergency Fund (UNICEF) sponsored the International Conference on Primary Health Care in Alma-Ata, USSR (now Kazakhstan).$^{324}$ The conference was attended by representatives of 134 nations.$^{325}$ The resulting “Declaration of Alma-Ata” was the first international declaration underlying the importance of primary health care and helping entrench the idea of a human right to health.

The Declaration consisted of ten articles relating to an overall aim of “health for all by 2000.”$^{326}$ The Declaration recognised that this aim was only achievable with a global approach of international collaboration from “all governments, all health and development workers, and the world community to protect and promote the health of all people of the world”.$^{327}$

319 Ottawa Charter for Health Promotion (International Conference on Health Promotion, Canada, 21 November 1986).
324 Alma-Ata is now known as Kazakhstan (previously part of the USSR at the time of the Declaration).
In article one the Declaration adopted the WHO’s broader definition of health which considered health a state of “complete physical, mental and social well-being” and declared the attainment of health a “fundamental human right” and a “world-wide social goal”. Participating states recognised that promotion and protection of health was essential for economic and social development as well as a “better quality of life”.

Interestingly the preservation or promotion of environmental health was not specifically mentioned. However the preservation of the natural environment to ensure positive effects on human health was discussed throughout the document. For example article seven which outlined primary health care also included a discussion of what are now considered primary functions of environmental health. As well as aiming to address the specific health problems of communities, point three of article seven demonstrated that primary health care (in the context of the Declaration) included the control and monitoring of food supply, safe water and basic sanitation. The interdisciplinary nature of the area was also confirmed with “coordinated efforts” sought from various sectors including health, national and community development, food, housing and public works.

The WHO’s Health Assembly adopted the resolution of the Alma-Ata conference in 1979 and again endorsed the “formulation and implementation of national, regional and global policies, strategies and action plans” in an attempt to achieve “health for all by the year 2000”. Rather than expecting states to negotiate on acceptable action plans as a whole, the WHO considered that individual countries should formulate their own

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330 Declaration of Alma-Ata (International Conference on Primary Health Care, Alma Ata, USSR, 6-12 September 1978) art 1.
331 Declaration of Alma-Ata (International Conference on Primary Health Care, Alma Ata, USSR, 6-12 September 1978) art 3.
332 Declaration of Alma-Ata (International Conference on Primary Health Care, Alma Ata, USSR, 6-12 September 1978) art 7 point 3.
333 Declaration of Alma-Ata (International Conference on Primary Health Care, Alma Ata, USSR, 6-12 September 1978) art 7 point 4.
334 World Health Organisation Health for All by the Year 2000: Formulating Strategies for Health for All by the Year 2000 (WHA32.30, 1979).
335 Valerie A Brown, John Grootjans, Jan Ritchie, Mardie Townsend and Glenda Verrinder (eds) Sustainability and Health: Supporting Global Ecological Integrity in Public Health (Allen and Unwin, New South Wales, 2005) at 98.
national strategies to respond to health and then regional and global strategies could be formulated based on national strategies.\textsuperscript{336}

The Declaration of Alma-Ata and “Health for All by 2000” has attracted criticism from some commentators as many of the goals have not been achieved. Some argue that the instruments were hindered by the language of diplomacy leading to broadly worded ideals without the specifics to make them achievable. However there is no doubt that these instruments played an important part in shaping an early international health framework.

\textbf{4.2.1.2 The Ottawa Charter for Health Promotion}

In 1986 the first International Conference on Health Promotion took place in Ottawa, Canada. The approach of the convention was to look at the past failings in health promotion (i.e. the failed progress on “Health for All by 2000”) and create a new plan of action. The concept of health promotion was broadened beyond the responsibility of the health sector to include other government sectors with a role in maintaining the “fundamental conditions and resources for health”\textsuperscript{337}.

In regards to environmental health, prerequisites for health were identified: \textsuperscript{338}

The fundamental conditions and resources for health are peace, shelter, education, food, income, a stable ecosystem, sustainable resources, social justice and equity. Improvement in health requires a secure foundation in these basic prerequisites.

The inclusion of the health of the ecosystem and sustainable resources reflected the 1980s shift in global strategy to include environmental factors in an attempt to improve health.

In fact the intrinsic link between health and environment (which is the cornerstone of environmental health) was specifically outlined in the Charter’s explanation on the meaning of “Health Promotion Action”. Here the Charter stated that the “inextricable

\textsuperscript{336} World Health Organisation \textit{Health for All by the Year 2000: Formulating Strategies for Health for All by the Year 2000} (WHA32.30, 1979) at 3.

\textsuperscript{337} Valerie A Brown, John Grootjans, Jan Ritchie, Mardie Townsend and Glenda Verrinder (eds) \textit{Sustainability and Health: Supporting Global Ecological Integrity in Public Health} (Allen and Unwin, New South Wales, 2005) at 100.

\textsuperscript{338} Ottawa Charter for Health Promotion “Prerequisites for Health” (International Conference on Health Promotion, Canada, 21 November 1986).
links between people and their environment constitutes the basis for a socio-ecological approach to health”.339 This included a focus on making political, economic, social, cultural, environmental, behavioural and biological factors favourable to health. The Charter further introduced the concepts of “reciprocal maintenance” (caring for the environment to improve human health) and conservation of natural resources. These concepts are still core to modern environmental health theory today.

4.2.1.3 The Bangkok Charter for Health Promotion in a Globalised World

The global approach to environmental health established in the Ottawa Charter was reaffirmed in 2005 at the sixth International Conference on Health Promotion in Bangkok, Thailand.340 The purpose of the Bangkok Charter was to build upon the “values, principles and action strategies of health promotion” of the Ottawa Charter and the conferences in between which had been confirmed by Member States through the World Health Assembly.341 While the Bangkok Charter built on the accepted concepts of a right to health and the link between health and the physical environment, the Bangkok Charter also noted that the “global context” of health had “changed markedly” since the development of the first health promotion charter.342

This change in context was in part related to the new global forces in environmental health (and the recognition of these issues by states). Inequalities between countries in their environment and health standards, consumption of resources, pressure of increasing urbanization and global environmental change were all identified as new factors to take into account when measuring health. While increased globalization brought challenges, it also brought new opportunities for improved co-operation between states. Through increased contact and improved communication technology, states were more open and transparent on their health inadequacies. The open sharing of ideas and experiences (including dialogue between developed countries and

339 Ottawa Charter for Health Promotion “Health Promotion Action Means” (International Conference on Health Promotion, Canada, 21 November 1986).
340 The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005).
341 The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005) at 1.
342 The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005) at 2.
developing countries) “improved mechanisms for global governance”\textsuperscript{344} and renewed the drive for a global approach.

Like the Ottawa Charter, the Bangkok Charter advocated that through improved regulation and legislation to better protect health and well-being, and through building alliances between government, non-government and international organisations, the overall health and well-being of the global population and environment could be improved. To facilitate these changes the Bangkok Charter listed key commitments for the promotion of health. The first involved making the promotion of health “central to the global development agenda”.\textsuperscript{345} Health was to become an integral part of all domestic and global policy and be considered in all intergovernmental agreements. For example, as part of good global governance, trade and production health effects (particularly in regards to negative effects on lower socio-economic groups employed in manufacturing), would be recognised and addressed in addition to the usual economic considerations. As well as infiltrating environment based policies, health was becoming increasingly recognised as a “major determinant of socioeconomic and political development”.\textsuperscript{346}

4.2.2 Environment Based Frameworks

Just as international instruments based in health began to recognise the importance of the environment, environment based instruments began to include health and well-being of humans as a characteristic of a healthy environment. While the environment is sometimes seen as a neglected consideration in health (partially due to its long term goal orientation compared to health and its more controversial political nature) understanding national and international negotiations on the environment is essential when looking at health.

\textsuperscript{344} The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005) at 2.
\textsuperscript{345} The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005) Key Commitment One.
\textsuperscript{346} The Bangkok Charter for Health Promotion in a Globalised World (Sixth International Conference on Health Promotion, Bangkok, Thailand, 11 August 2005) Key Commitment Two.
4.2.2.1 The Stockholm Conference on the Human Environment (also known as the United Nations Conference on the Human Environment)

With the recognition of global environmental issues (and their increasing impact on health) the United Nations (UN) came under increased lobbying by international environmental groups to provide “world leadership” and launch a global approach to environmental issues. This discussion of “global environmental issues” was first attempted in 1972 at the United Nations Conference on the Human Environment held in Stockholm. The Stockholm Conference was an important turning point in international environmental law.

Participants from 113 countries met and reported on the state of their home environments in an attempt to gain an understanding of global environmental issues. While there was a clear difference in environment and health concerns between developing nations (concerned with disease, poverty, hunger and growing industrialization) and developed nations (concerned with industrial pollution, population, and resource control) all groups agreed on the need for control of population growth, natural resources and the need to protect the human environment from the negative effects of industrialization (again a strong environmental health focus).

The Declaration provided a starting point for many important environment and health concepts. Article one of the Stockholm Declaration expressed the human right to a healthy environment:

Man has a fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being.

This was later developed further in the Declaration of Alma-Ata (discussed previously). Principle two introduced the concept of considering “future generations” in environment planning – a concept which evolved further in the Rio Declaration (principle 3), the Kyoto Protocol on Greenhouse Gases (Article 2), and the Earth Charter (principles 1 and 4).

347 K Hilgenkamp Environmental Health: Ecological Perspectives (Jones and Bartlett Publishers, Canada, 2006) at 30.
348 K Hilgenkamp Environmental Health: Ecological Perspectives (Jones and Bartlett Publishers, Canada, 2006) at 30.
Article 21 (which was reaffirmed in principle 2 of the Rio Declaration) demonstrates an important step towards a global approach to environmental pollution and harm. Article 21 provides an important function in confirming a states “sovereign right to exploit their own resources” while providing a limit in that states have the responsibility “to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.”

Article 21 is significant as it “places damage to the environment of areas beyond national jurisdiction on the same footing as damage to the environment within a state”. This was an important step in acknowledging the global nature and importance of the environment and the need for global co-operation in addressing environmental issues.

The repetition of ideas throughout international instruments makes sense when considering that from a regulatory viewpoint these instruments are broadly worded ideals rather than “clear standards of action”. As states get familiar with the processes of global cooperation and as older Declarations (like Alma-Ata and Stockholm) are revisited, a trend is emerging towards a “command-and-control approach” with clearer outlining of goals within instruments. While this assists in understanding the goals of the declaration and aids in voluntary implementation, this change does not alter the “soft law” nature of the instruments. However, continual consultation between signatories can sometimes result in a move towards “framework”

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conventions and the establishment of international bodies who can make “impressive achievements in protecting the global environment”.356

The United Nations Environment Programme (UNEP) was founded at the Stockholm Conference with a goal of coordinating and promoting environmental activities within the UN system. Of the six main “cross cutting thematic priority areas”357 many relate to environmental health and the preservation of the environment in the interest of human health and well-being is a reoccurring theme. In the context of conflicts and disasters, the priority area includes minimizing “environmental threats to human well-being from the environment”358, ecosystem management is coloured by the need to manage for “ecological and human needs”359 and environmental governance is explained as “promoting informed decision making to enhance global and regional environmental co-operation”.360

In 1973 the WHO’s Environmental Health Criteria Programme was established following the Stockholm conference and recommendations of the World Health Assembly. An objective of the programme included examining the relationship between exposure to environmental pollution and human health. With an understanding of the link between environmental health and human health the programme aimed to set tolerable exposure limits to pollutants (as well as identify potential pollutants and promote epidemiological measures of pollutant exposure so that international comparison was possible).

4.2.2.2 The Montreal Protocol on Substances that Deplete the Ozone Layer

As discussed previously the discovery of the hole in the ozone layer in the 1980s resulted in worldwide recognition of a global environmental problem. In 1985 twenty nations met to discuss the problem in what was considered a “landmark in international environmental diplomacy”.361 The Protocol resulted in an agreement between nations to take “appropriate measures … to protect human health and the environment against

adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer”. 362

The phrasing of the agreement was broad without specific measures or causes of harm outlined. This led to criticism that the protocol was “unexceptional”. 363 However, the main aim of the protocol was to encourage monitoring of pollutants, research, global co-operation and sharing of research between states and accordingly organising a global response to an environmental issue was still an important achievement. The protocol also called for developed nations to cut chlorofluorocarbon (CFC), halon emissions and phase out methylchloroform emissions. 364

While some academics were initially sceptical of the effectiveness of a protocol only signed by 24 nations (particularly given that developing nations were not under the same obligation as developed nations) the protocol has since been ratified by 175 countries. 365 Further meetings on implementing the Montreal Protocol and further decreasing the emission of harmful gases continued with meetings in Helsinki (1989), Cairo (1998), Geneva (1999) and Beijing (1999).

The 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change furthered the initial steps of the Montreal Protocol by encouraging promotion of sustainability, 366 research, development, renewable energy 367 and encouraging the reduction of greenhouse gases. 368

4.2.2.3 The Rio Declaration on Environment and Development

In 1992 the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro, Brazil. The conference was aimed at international co-
operation in addressing global environmental problems. Many documents were produced including the following - the “Rio Declaration on Environment and Development”, the “Millennium Development Goals” and “Agenda 21” (a “blueprint” for sustainable development\(^{369}\)).

The conference (following on from Stockholm) involved 178 nations. The participants identified and discussed shared environment problems including population growth, pollution, climate change, poverty and resource depletion. While large steps were taken in global co-operation there were still problems between nations with some refusing to discuss certain issues on religious / cultural grounds\(^{370}\) and some nations refusing to sign international agreements. Despite these problems the conference continued to strengthen the lines of communication between countries on global issues and resulted in the growth of a network of non-government organisations and official environmental agencies aimed at addressing pollution\(^{371}\).

The Rio Declaration reinforces certain key principles of environmental health. Principle one of the Declaration affirms the human right to a “healthy and productive life,”\(^ {372}\) principle two affirms state responsibility for damage outside the limits of their national jurisdiction\(^ {373}\) and principle seven affirms the idea of “global partnership”\(^ {374}\) (while principle twelve builds further on the idea to include “international consensus”\(^ {375}\)). Open lines of communication between states is encouraged throughout the Declaration with states required to notify other states of disasters\(^ {376}\) and to consult

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\(^{369}\) K Hilgenkamp *Environmental Health: Ecological Perspectives* (Jones and Bartlett Publishers, Canada, 2006) at 31.

\(^{370}\) The Vatican and some Islamic nations were opposed to discussions on controlling population growth.

\(^{371}\) K Hilgenkamp *Environmental Health: Ecological Perspectives* (Jones and Bartlett Publishers, Canada, 2006) at 31.


with potentially affected states in “good faith” regarding activities that may have a “significant adverse trans-boundary environmental affect”\textsuperscript{377}.

Principle fourteen states that: \textsuperscript{378}

States should effectively co-operate to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

While the principle reinforces the idea of state responsibility mentioned in principle two, it is interesting in regards to the developing recognition of environmental health. The principle recognises that states cannot just distance themselves from environmental health problems caused by their activities by relocating them. This is not deemed acceptable to a global approach. However, the addition of the word “severe” to environmental degradation raises the threshold and would still support the relocation of some risky activities.

Another interesting development showing recognition of a key principle of environmental health is the recognition of health inequalities and the identification of specific groups in an effort to ensure equal rights to environmental health. Women\textsuperscript{379}, youth\textsuperscript{380} and indigenous peoples\textsuperscript{381} are all specifically mentioned as groups whose participation should be encouraged in the aim of sustainable development and overall environmental health.

As well as building on previous international instruments, the Rio Declaration is significant for advocating the use of “environmental impact assessment” tools in environment decision making. Principle 17 denotes that competent national authorities should be established and environment impact assessment should be carried out to determine if activities “likely to have a significant adverse impact on the

environment” should be accepted. This concept, as well as the customary norm of the “precautionary principle” (further discussed in principle 15), are commonly used in environmental health decision making.

Even though the Rio Declaration endorses and encourages many important principles it was criticised by some commentators who were still disappointed and considered it a “step back from Stockholm”. The comments follow past criticism on previous declarations in that the declaration failed to provide clear action plans on environmental concerns and instead provided “disparate provisions”. Regardless, the Rio Declaration is still widely praised as an appraisal of global environment and health concerns which considered the diversity of the participating nations and fostered the sense of global responsibility.

4.2.2.4 Other International Environmental Instruments of Interest

Instruments such as the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (Basel Convention) and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemical and Pesticides in International Trade (Rotterdam Convention) are all worthy of mention. These conventions provide comprehensive insight into the control and monitoring of hazardous substances in the interest of the environment and human health.

4.2.3 Holistic Frameworks

4.2.3.1 The Earth Charter

The Earth Charter is a significant development in the global-governance approach to environment and health issues. Rather than basing itself in health, the environment or

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economics the Earth Charter provides an interdisciplinary approach geared towards a “global environmental precaution”.\textsuperscript{387}

Unlike earlier instruments the Earth Charter is unique as it represents a broad consensus on a wide variety of global principles. This was largely achieved by a process of “world-wide cross-cultural conversation about common goals and shared values”.\textsuperscript{388} The Earth Charter seems to have dodged the issues of the “language of international diplomacy” that plagued earlier instruments. This has allowed for the cementing of principles and the building of clear foundations in the area which solves the problem of arbitrary application. While many concepts like precaution, public participation and global cooperation are not new, the Earth Charter is unique in actually discussing the interaction of the concepts (rather than merely defining them).

The promotion of environmental health can be seen throughout the principles of the Earth Charter. Principle two “Ecological Integrity” part 3 asks states to adopt “patterns of production, consumption and reproduction that safeguard Earth’s regenerative capacities, human rights and community well-being.”\textsuperscript{389} This brings together consideration for ecosystem capacity and human well-being in everyday actions.

Under principle three “Social and Economic Justice” part 1(a) the role of environmental health is validated as states are asked to:\textsuperscript{390}

\begin{quote}
Guarantee the right to potable water, clean air, food security, uncontaminated soil, shelter and safe sanitation, allocating the national and international resources required.
\end{quote}

The monitoring, maintaining and promotion of the above issues fall within the ambit of the environmental health functions commonly carried out at local government level. The inclusion of international resources where required reinforces global governance and the need for these areas to be formally supervised at local, national and international levels.

As in the Rio Declaration, vulnerable groups such as women, indigenous peoples, minorities and young people are highlighted in an effort to respect a global human right to a “natural and social environment supportive of human dignity, bodily health and spiritual well-being”.

Again the principles of co-operation and global partnership are at the forefront of the document with principle 8 recognizing a further need for nations to develop “international scientific and technical cooperation” and for nations to recognise and accept that a nation’s culture and development status will shape their viewpoints. However, as well as developing an international cooperative approach to environmental issues, the Earth Charter is careful to acknowledge that global progress is often best achieved by following the dictum of “think globally, act locally”. In following with democracy, principle four part 1(f) highlighted the importance of empowering local communities to care for their local environment while assigning “environmental responsibilities to the levels of government where they can be carried out most effectively”. While reinforcing that global thinking will always be an important part of implementation of any measures in a real world scale, the Charter recognised the value of autonomy and self-governance. Local and national management ensures tailored and flexible decision making while a globalised body is crucial for meeting global needs.

As “soft law” the Earth Charter is not legally binding, but it has increasingly been utilised as it provides an “ethical foundation for the ongoing development of environmental and sustainable development law.” Accordingly the Charter, hailed for its innovative design, provides the starting point for the implementation of its principles into a global “legally binding instrument”, which will have a significant impact on the approach to global environmental health issues.

4.2.4 Summary

In examining these instruments it can be seen how the key developments in environmental health philosophy and the key principles of environmental health introduced in an earlier chapter of this thesis are recognised on a global scale. The intrinsic link between health and the environment, the importance of precaution, health equality, public participation and interdisciplinary cooperation at local, national and global level is reiterated time and time again.

The question then becomes what is the significance of the inclusion of these concepts at a global level and how will international law reflect on domestic law and policy in New Zealand.

4.3 IMPACTS OF INTERNATIONAL LAW ON DOMESTIC LAW & POLICY

The inclusion of a concept in international law does not necessarily denote its inclusion in domestic law. Often domestic law and international law are seen as two separate spheres. While this separation preserves sovereign rights of states to rule and regulate their own jurisdictions, it is also responsible for “creating gaps, barriers and inefficiencies for the task of implementing regional and national responses to global environmental problems”.399

There are two main approaches to international law that can be taken domestically. The “dualist approach” protects state sovereignty and the separation provides that international law must be incorporated into domestic legislation to be enforceable in the courts.400 The “monist approach” allows domestic courts to apply international law prior to domestic incorporation.

The traditional dualist approach has been adopted in New Zealand courts when considering treaties. Accordingly, treaties require incorporation into domestic

400 Alex Conte An Introduction to International Law (LexisNexis NZ Ltd, Wellington, 2006) at 70.
legislation prior to application as demonstrated by the comments of Cooke J in *Ashby v Minister of Immigration*.

…the Convention has not been incorporated into New Zealand law by any Act of Parliament. It is elementary that international treaty obligations are not binding in domestic law until they have become incorporated in that way.

While this demonstrates a strictly dualist approach, courts now take closer notice of international law and often attempt to interpret domestic legislation in a way that is consistent with international law. This is done in order to give some weight to international conventions and apply the “spirit” of the convention prior to introduction into domestic law. Cooke P took this view further in *Van Gorkom v Attorney General* stating that “compelling reason” is required before courts should accept the “introduction of a policy conflicting the spirit of international standards proclaimed by United Nations Documents”.

However, while courts are considering international law when interpreting domestic legislation, it is important to note that international conventions (ratified by New Zealand) are not enforceable until incorporated into domestic legislation.

In contrast New Zealand courts have adopted a monist approach to customary international law allowing them to apply rules of custom without domestic incorporation. This has been demonstrated in environmental health by the courts willingness to consider the precautionary principle where it is considered “relevant and reasonably necessary” and where consideration of the principle would be consistent with statutory purpose.

This is coupled with the willingness of the courts to interpret domestic legislation in a way that is consistent with international customs under a “constitutional presumption” that Parliament would intend to legislation consistent with their international

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401 *Ashby v Minister of Immigration* [1981] 1 NZLR 222 (CA) at 224.
402 This is consistent with the presumption of law in statutory interpretation that Parliament would not intend to create legislation which is in conflict with their obligations under international treaties that they have signed.
405 *Van Gorkom v Attorney General* [1977] 1 NZLR 535 (NZSC) at 543.
407 Alex Conte *An Introduction to International Law* (LexisNexis NZ Ltd, Wellington, 2006) at 71.
obligations. This provides courts with flexibility to apply customary international law as an interpretative aid, however domestic law will trump customary international law if it is irreconcilable.

In regards to the RMA, where a territorial authority wishes to incorporate international law in its policy statement, it must remain within the “scope and purpose of the RMA” or other relevant domestic law. This was demonstrated in *St Columba’s Environmental House Group v Hawkes Bay Regional Council* which reinforced the fact that the Rio Declaration was not legally enforceable in New Zealand, as it is not incorporated in domestic law. In *St Columba’s* the judge considered the adoption of the Rio Declaration principles in the regional council’s policy statement by checking if any specific provisions of the RMA provided “permission for the council to adopt the principles of the Rio Declaration”.

The judge concluded that s 62 did not provide for regional councils to have regard to the Rio Declaration in making policy statements and that it was not appropriate to incorporate the Rio Declaration as an additional relevant matter under a broader provision. While the judge acknowledged *Tavita v Minister of Immigration*, (where Cooke P determined that a failure to give effect to an international covenant would attract criticism) she drew a distinction between human rights cases and environmental cases stating:-

Where the international covenant concerns more amorphous environmental issues it may not be quite so manifestly important, especially if it conflicts with domestic law … the judiciary cannot import a convention into domestic law. It can only be a relevant consideration. As a consequence, we do not consider the Tribunal is the appropriate forum by which the Rio Declaration principles may be incorporated into the RPS.

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409 Alex Conte *An Introduction to International Law* (LexisNexis NZ Ltd, Wellington, 2006) at 72.
410 *Worth v Worth* [1931] NZLR 1109 (CA); *Sellers v Maritime Safety Inspectors* [1999] 2 NZLR 44 (CA) at 46-47 (maritime boat safety offence); *New Zealand Police v Teddy* [2013] NZHC 432 (reliance on UNCLOS to confer jurisdiction on court under New Zealand law).
411 *Tavita v Ministry of Immigration* [1994] 2 NZLR 257 (CA).
414 *St Columba’s Environmental House Group v Hawkes Bay Region* [1994] NZRMA 560 (PT).
415 *St Columba’s Environmental House Group v Hawkes Bay Region* [1994] NZRMA 560 (PT) at 575.
416 This section has since been amended.
417 *St Columba’s Environmental House Group v Hawkes Bay Region* [1994] NZRMA 560 (PT) at 575.
419 *St Columba’s Environmental House Group v Hawkes Bay Region* [1994] NZRMA 560 (PT) at 575.
Accordingly the Rio Declaration could not be included in the regional council’s policy statement and could only be “attached as an annex, without having the legal force of the policy statement itself”.\textsuperscript{420}

In \textit{New Zealand Airline Pilots Association v Attorney-General}\textsuperscript{421} the court concluded that where possible courts should interpret in a manner consistent with international law. \textit{Sellers v Maritime Safety Inspector}\textsuperscript{422} adopted this approach and the courts used the customary international law of the sea in applying the Maritime Transport Act 1994. The judge reasoned that the law of the sea was traditionally derived from international law, so domestic legislation was sufficiently connected to allow the two to be read together for interpretation.

In 2009 \textit{Zhang v Police}\textsuperscript{423} reconfirmed \textit{Ashby} and a preference for interpreting domestic legislation in a manner consistent with international obligations,\textsuperscript{424} unless the legislation “clearly precludes the application of customary international law”.\textsuperscript{425} However the judge expressed caution in recognising “given norms” as a rule of customary international law:.-\textsuperscript{426}

The … inquiry is complex and wide-ranging … customary international law has generally only been applied at the domestic level in cases where the provenance of the rule is so well recognised as to be beyond reproach.

The court considered previous case law and noted that there was a “degree of ongoing confusion about the extent of ambiguity (if any) necessary”\textsuperscript{427} before the court will consider international instruments in interpretation. Here the judge erred on the side of caution stating that where domestic law is sufficiently “clear and unambiguous” it must be given effect to, even if it does not reflect New Zealand’s international obligations.\textsuperscript{428}

\begin{thebibliography}{99}
\bibitem{Palmer} Kenneth Palmer \textit{Local Authorities Law in New Zealand} (Brookers Limited, Wellington, 2012) at 828.
\bibitem{NZLR269} \[1997\] 3 NZLR 269.
\bibitem{NZLR44} \[1999\] 2 NZLR 44.
\bibitem{NZAR217} \[2009\] NZAR 217.
\bibitem{Perspective} An example of this could include the recognition of the precautionary principle in New Zealand domestic law. See The Treasury & Linda Cameron \textit{Environmental Risk Management in New Zealand – is there Scope to Apply a More Generic Framework?} (New Zealand Treasury, Policy Perspectives Paper 06/06, Wellington, July 2006).
\bibitem{Zhang1} \textit{Zhang v Police} \[2009\] NZAR 217 (HC) at [23].
\bibitem{Zhang2} \textit{Zhang v Police} \[2009\] NZAR 217 (HC) at [25].
\bibitem{Zhang3} \textit{Zhang v Police} \[2009\] NZAR 217 (HC) at [31].
\bibitem{Zhang4} \textit{Zhang v Police} \[2009\] NZAR 217 (HC) at [34].
\end{thebibliography}
This demonstrated a caution in statutory interpretation and reminded courts of the dualist approach stated in *Ashby*, while recognising the ability for courts to have regard to customary international law in interpretation.429

As recognised by *St Columba’s*430 the majority of these cases have involved human rights issues in regards to criminal or immigration law rather than environmental health concerns. However the 2012 case *Re Buller Coal Ltd*,431 involving consent to a coal mine, provides some insight. Here Sir Geoffrey Palmer, on behalf of the second applicant, submitted that the court is obliged “where possible to interpret domestic statutes consistently with international obligations”.432 The court rejected this argument on the basis that there was no “ambiguity, uncertainty, or room for discretion or choice in the interpretation of the words and policy”433 of the Act and accordingly “Sir Geoffrey Palmer’s invitation to the court to consider … international obligations does not come into play”.434

This would suggest that international law may be used only where interpretation of the domestic legislation is difficult and requires assistance. However the court clarified this by noting that this approach (as taken in *Greenpeace New Zealand Inc v Northland Regional Council*435) was because the case dealt with the environmental issue of climate change, where regulatory power has been removed from regional government and placed with central government “by way of activity at a national level”.436

While seen in two spheres, care must be taken not to assume reluctance on the part of states to incorporate international law at domestic level or to allow the application of customary norms prior to adoption. As shown in *Re Buller Coal Ltd*,437 Parliament’s actions in incorporating international obligations into domestic legislation gives guidance to the court on how to approach interpretation.

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429 See also *Bujak v Minister of Justice* CIV-2009-485-2266, 18 November 2009 (HC).
430 *St Columba’s Environmental House Group v Hawkes Bay Region* [1994] NZRMA 560 (PT).
432 *Re Buller Coal Ltd* [2012] NZEnvC 80 (EC) at [37]. The decision has been confirmed in *West Coast Ent Inc v Buller Coal Ltd* [2013] NZSC 87, [2014] 1 NZLR 32.
433 *Re Buller Coal Ltd* [2012] NZEnvC 80 (EC) at [50].
434 Re Buller Coal Ltd [2012] NZEnvC 80 (EC) at [50].
436 Re Buller Coal Ltd [2012] NZEnvC 80 (EC) at [53].
437 Re Buller Coal Ltd [2012] NZEnvC 80 (EC).
While some commentators become frustrated at the length of time it takes to pass domestic legislation into law (which can leave domestic law out of date with current international law) it cannot be assumed that there is a general reluctance on a state’s part to draft legislation consistent with their international obligations.

For example, in the area of environmental health New Zealand’s ratification of the Kyoto Convention on Climate Change has been followed by incorporation of the Convention into domestic law via the Climate Change Response Act 2002 and the Resource Management (Energy and Climate Change) Amendment Act 2004.438

Under the Resource Management Act (RMA) the Minister can request applications to be considered by a “special board of inquiry” when proposals are of “national significance” and may “affect New Zealand’s international obligations to the global environment”.439 In order to determine whether a matter is of “national significance” the Minister may have regard to whether the matter “affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment”.440 In this situation incorporation into domestic legislation is not required for consideration to occur.

Several provisions of the RMA refer to the role of international obligations in environmental management of the coastal environment. This reflects the idea that New Zealand’s maritime legislation is based on international customary law of the sea. For example under s 58 coastal policy statements can include “objectives or policies” regarding the “implementation of New Zealand’s international obligations affecting the coastal environment”.441 The Governor-General may make regulations under s 360, which include regulations which are deemed “necessary or desirable”442 to implement international obligations under “convention, protocol or agreement related to the protection of the maritime environment”,443 to become a party to such agreements,444 or to implement “international practices … recommended by the International Maritime

Organisation”. The Minister also has the power to amend the schedule to ensure compliance with international conventions related to marine pollution. These sections illustrate Parliament’s intention that New Zealand’s management of the marine environment will expressly comply with international obligations. This allows the courts to consider international law in making decisions.

Further changes to the RMA in 2005 provide for the incorporation of “standards, requirements, or recommended practices of international or national organisations” by reference in a plan or proposed plan (in schedule 1) or in a national environmental standard, national policy statement and New Zealand coastal policy statement (in schedule 1AA). The term “standards, requirements, or recommended practices of international or national organisations” is included in similar sections in other pieces of legislation including the Health Act 1956 which allows for incorporation by reference into regulations and compliance documents, and the Public Health Bill which intends to provide for incorporation by reference into the “Act or into any regulations, standards or other compliance documents”.

These provisions clarify and simplify the process of recognising international obligations in New Zealand law, particularly where the international instruments have not been incorporated into New Zealand domestic law, or where it is unclear whether the issue amounts to an accepted customary norm.

This emerging dedication to meeting international obligations was also reflected in the Environmental Protection Authority Act 2011. In s 12 of the Act the objectives of the Environmental Protection Authority includes undertaking functions “in a way that … enables New Zealand to meet its international obligations”. The functions of the Environmental Protection Authority (at the request of the Minister) also include contributing to and co-operating with “international forums” and “carrying out international obligations related to its functions” under an “environmental act”. The

447 Resource Management Act 1991, sch 1, cl 30(1)(a) and sch 1AA, cl 1(1)(a).
450 Health Act 1956, s 137(1)(a). This section was inserted on the 1st of July 2008 by s 10 of the Health (Drinking Water) Amendment Act 2007 (2007 No 92).
451 Public Health Bill 2007 (177-2), cl 337.
452 Environmental Protection Authority 2011, s 12(1)(b).
453 Environmental Protection Authority 2011, s 13(c)(iii).

Similarly the Public Health Bill (currently awaiting its second reading in Parliament) aims to replace the Health Act 1956 and ensure compliance with the World Health Organisation’s International Health Regulations of 2005. The Bill lists compliance with the international regulations in its purpose, and provides the Governor-General with the power to amend schedules on notifiable conditions to comply with “any international obligation that New Zealand may have in relation to health”.

4.4 HUMAN RIGHTS

The concept of a human right to health and a clean environment has arisen in this chapter when discussing international instruments. First, the World Health Organisation’s constitution declared health to be a “fundamental human right” in 1948. In 1972 the Stockholm Declaration expressed the human right to a healthy environment as permitting a life of “dignity and well-being” in an adequate environment. This was again reaffirmed in 1992 when the Rio Declaration confirmed a human right to a “healthy and productive life”. Similarly the Earth Charter in 2000 reinforced a global human right to a “natural and social environment supportive of human dignity, bodily health and spiritual well-being”.

The reference to “international obligations” in legislation (as mentioned above) provides some opportunity to provide for human rights in New Zealand domestic law. Judges have continued to consider international human rights charters when interpreting domestic legislation.

454 Public Health Bill 2007 (177-2), cl 3(2)(ii).
455 Public Health Bill 2007 (177-2), cl 3(2)(ii).
456 Public Health Bill 2007 (177-2), cl 37(3)(f).
New Zealand’s Human Rights Commission, in accordance with obligations under the Universal Declaration of Human Rights\textsuperscript{461} has sought to incorporate some environmental health relevant human rights into the \textit{New Zealand Action Plan for Human Rights}.\textsuperscript{462} Priority 6 on “Economic Social and Cultural Rights”\textsuperscript{463} identified action required for accessible and affordable housing and for health, concluding that “achieving the highest attainable standard of health … depends first and foremost on clean air, clean water and waste disposal”.\textsuperscript{464} A priority for action to achieve this included strengthening the “whole-of-government” approach to attain environmental health without expressly stating a human right.

In examining the current status of human rights in New Zealand (including rights to environmental health) the Human Rights Commission described New Zealand’s current approach to human rights as:\textsuperscript{465}

\begin{quote}
… pragmatic and practical rather than legalistic. Human rights, particularly economic, social and cultural rights, are currently provided for largely through policy and practice rather than through legislation upheld by the courts.
\end{quote}

In 2010 the Human Rights Commission completed a report on human rights in New Zealand.\textsuperscript{466} Health and housing were two of the key environmental health related rights identified. In regards to health the Commission accepted that there was “no express right to health in New Zealand Law”\textsuperscript{467} but stated that the government accepted a commitment to comply by international standards and that this could be achieved by recognition of international obligations in current health legislation, including the New Zealand Public Health and Disability Act 2000.\textsuperscript{468}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{461} Universal Declaration of Human Rights (1948). See also the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
\item \textsuperscript{465} Human Rights Commission “Priorities for Action 2005 – 2010” (Human Rights Commission, Wellington, 2005) at priority 7.3.
\item \textsuperscript{466} Human Rights Commission “Human Rights in New Zealand” (Human Rights Commission, Wellington, 2010).
\item \textsuperscript{467} Human Rights Commission “Human Rights in New Zealand” (Human Rights Commission, Wellington, 2010) at 156.
\item \textsuperscript{468} Human Rights Commission “Human Rights in New Zealand” (Human Rights Commission, Wellington, 2010) at 156.
\end{itemize}
\end{footnotesize}
Similarly a right to housing is not expressly provided for, however various existing acts such as the Building Act 2004, Residential Tenancies Act 1986, Local Government Act 2002, Resource Management Act 1991 and Watertight Homes Resolution Services Act 2006 provide “certain rights and protections related to housing”. In 2012 the Human Rights Commission also released a report to “promote the human rights implications of water”. Again, no set human right to water was recognised in New Zealand legislation. This does not appear to be a problem in New Zealand, due to the abundance of fresh water supply in the country. However the commission recognised increasing governance issues surrounding water and water use which may require a formalising of a right in this area.

While the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 are the primary human rights legislation in New Zealand, neither contains a specific reference to a right to health or a right to a clean environment. Recent cases where prisons and hospitals have banned smoking, under the Smoke Free Environmental Act 1990, have led to complaints under both acts. In *B v Waitemata District Health Board* the applicant argued that a ban on smoking in the DHB’s hospitals and facilities discriminated on the grounds of psychiatric illness and / or disability, and breached rights not to be “subjected to torture or cruel treatment”, to be “treated with humanity and with respect”, and to “respect private life”. The judge concluded that no breaches had occurred as the right to smoke was not protected under these rights and that no discrimination had occurred as the ban applied equally to “all patients, staff and visitors”. The judge differentiated this case from the prison based cases (which had been successful in overturning the bans) on the basis that the DHBs had different functions and powers under legislation. The judge further asserted that even if a breach had occurred, the smoke-free policy was a “justified limitation under s 5 of the

471 *B v Waitemata District Health Board* [2013] NZAR 937.
472 *B v Waitemata District Health Board* [2013] NZAR 937 at [56].
473 *B v Waitemata District Health Board* [2013] NZAR 937 at [64].
474 New Zealand Bill of Rights Act, s 9. See *B v Waitemata District Health Board* [2013] NZAR 937 at [70].
475 New Zealand Bill of Rights Act, s 23(5). See *B v Waitemata District Health Board* [2013] NZAR 937 at [70].
476 New Zealand Bill of Rights Act, s 28. See *B v Waitemata District Health Board* [2013] NZAR 937 at [70].
477 *B v Waitemata District Health Board* [2013] NZAR 937 at [94].
478 *B v Waitemata District Health Board* [2013] NZAR 937 at [92].
Act\(^{479}\) as the ban was important to reduce smoking and protect health (of both smokers and non-smokers) and it was a proportionate response to the issue.\(^{480}\)

Accordingly New Zealand’s environmental legislation does not currently contain a strong reference to “human rights” per se; however there is a growing interest in an emerging protection of a human right to a life-sustaining environment and a right to health, to water and to food.\(^{481}\) The review of New Zealand’s constitutional provision will consider the preservation and protection of environmental rights and whether incorporating these rights into a written constitution, or amending current legislation to include a human rights focus, is a necessary step for protection.\(^{482}\)

While human rights have been addressed here and its importance as an emerging area has been identified, a full discussion on human rights has not been included in this thesis in an effort to narrow the scope and direction of the thesis.

### 4.5 SUMMARY

The global nature of many environmental health issues cannot be ignored. While issues like air pollution were previously treated as isolated and controlled on a local and domestic level, states now recognise that global cooperation is required to address the full scale of environmental health concerns. While state sovereignty and the reluctance of states to erode their absolute power over their jurisdictions have resulted in slow progress, international environmental law and health law is gaining momentum. With the adoption of holistic frameworks like the Earth Charter further progress will be made to combat issues at a global scale.

This means that when examining the current New Zealand environmental health framework and considering potential reforms, the increasing role of the global community must be taken into account. Local and national frameworks adopted in New Zealand must be compatible with a larger global framework. This will not only

\(^{479}\) B v Waitemata District Health Board [2013] NZAR 937 at [95].

\(^{480}\) B v Waitemata District Health Board [2013] NZAR 937 at [95].


\(^{482}\) In November 2013 (after the date of this thesis) the Constitutional Advisory Panel released a report on New Zealand’s Constitution. See Constitutional Advisory Panel “New Zealand’s Constitution: A Report on a Conversation” (Constitutional Advisory Panel, Wellington, 2013). The report noted a strong theme of environmental rights and the need for a right “affirming a human right to a clean and healthy environment” (page 56). Suggestions included incorporating this right into a written constitution, and / or reforming existing legislation. There were some concerns about protecting this right while balancing against other rights such as property rights (page 56).
benefit the ease of application of international law, but will assist in the effective
control and monitoring of global environmental health threats that impact on New
Zealand.
Chapter 5 - ENVIRONMENTAL HEALTH FUNCTIONS OF CENTRAL GOVERNMENT

This chapter aims to provide an outline of the functions of central government in regards to environmental health. The various parties at central government responsible for environmental health management will be identified and their roles under key legislation outlined and critiqued. Recent initiatives, such as the introduction of the Environmental Protection Authority, will be discussed, including any impact the initiatives may have on the current system. Finally the chapter will briefly summarise the effectiveness and efficiency of central government’s role (which is further discussed in chapter 7, Critical Analysis of Central and Local Government’s Environmental Health Functions).

A flowchart titled Central and Local Government Environmental Health Flowchart is located on the first pages of the appendices of this thesis. The chart represents the myriad of central and local government bodies that work together in this area. In regards to central government, the chart represents the relationship and roles of the two government ministries mostly involved in environmental health management – the Ministry of Health and the Ministry for the Environment. Other government ministries who also administer environmental health related legislation are included in a separate table in the appendices. Other centralised bodies including the Parliamentary Commissioner for the Environment (who performs an independent watchdog role) and the Environmental Protection Authority are also included in the flowchart and are discussed throughout this chapter. The role of local authorities and district health boards is discussed in chapter 6, Environmental Health Functions of Local Government.
Central government and local government provide “two spheres of a system of collective decision-making,” both actively involved in carrying out environmental health functions. However, while both roles are connected, local government is not merely an agent of central government that implements a nationally driven plan. Rather, each follows its own sets of goals, parts of which reflect national requirements, while other parts reflect local and community needs and desires. This freedom of movement and autonomy in the central government / local government relationship (together with a balancing of restriction and guidance from central government) is important in explaining the environmental health functions of each government level. Accordingly, a discussion of the central government / local government relationship is provided in chapter 7, *Critical Analysis of Central and Local Government’s Environmental Health Functions*.

### 5.1 **CORE PRINCIPLES IN NEW ZEALAND ENVIRONMENTAL HEALTH GOVERNANCE**

The Resource Management Act 1991 (RMA) establishes the “functions, powers and duties of central and local government” in Part 4 of the Act. The passing of the RMA in 1991 is significant as it consolidated the existing body of legislation on air, land and water into one piece of legislation promoting integrated environmental management by placing policy-making at central government level (through national environmental standards (NES) and National Policy Statements (NPS)) and implementation at regional and territorial level. Sustainable management, integrated management of resources, and policy-based management are all core concepts of New Zealand’s environmental health governance framework. These principles explain why central government appears to take a limited role in environmental health.

The protection of the “principle of devolved decision making” is key to New Zealand’s governance model and ensures a careful balance between central government leadership and the protection of local decision making, democracy and public participation. Using an integrated management system, governance has been largely decentralised. The
allocation of functions depends on the public policy objectives of central government and is governed by central government principles that determine which level of government (central, regional, or local) would be most suitable for carrying out the function. Organisational choice is based on effectiveness and efficiency – which level of government would be in the best position to achieve central government’s overall policy goals? Which level of government would be most cost effective in carrying out the role? Answers to these questions are based on the underlying premise that management is best achieved by the level of government closest to the resource (which favours decentralised management).488

Accordingly the splitting of functions between central, regional and local government assists this integration as various bodies work together to manage resources. For example, decisions on: land use (such as housing density or noise) which have an effect on the immediate environment are governed by city and / or district councils;489 air quality, water quality and discharge of contaminants are governed by regional councils490 as the same resource is shared over a greater area requiring consistency in approach. Central government is largely removed from this process, however it is able to provide guidance and national consistency with national instruments (such as National Environmental Standards491 or National Policy Statements)492 or provide direct intervention in matters of National Significance493 or via the Environmental Protection Authority.494

Five years after the RMA the Hazardous Substances and New Organisms Act 1996 (HSNO) was established. This Act was also administered by the Ministry for the Environment and demonstrated a contemporary approach with a shift that separated the assessing and decision-making powers (in regards to hazardous substances and new organism management) from the policy-making powers of the Ministry for the Environment. The Act established the Environmental Risk Management Authority495

487 Resource Management Act 1991, s 30(1)(a) & s 31(1)(a).
491 Resource Management Act 1991, s 43.
(ERMA), an autonomous crown entity\textsuperscript{496} which was an independent body but was still required to “have regard to government policy when directed by the responsible Minister”\textsuperscript{497}

The role of ERMA included overseeing the enforcement of the HSNO Act\textsuperscript{498} and included an advisory role to the Minister.\textsuperscript{499} The Act acknowledged that different Acts were used concurrently to regulate the area and signalled an interest in consistency in s11(1)(a)(ii) providing ERMA with the ability to advise the Ministry on “inconsistencies or conflicts between any controls placed on hazardous substances and new organisms under the Act and any controls placed…under any other Act”.\textsuperscript{500} ERMA’s key role involved assessing the risk of hazardous substances and new organisms and creating regulations controlling their use. It was intended that the authority would consist of a small number of experts with the practical experience and scientific knowledge required to regulate the area.\textsuperscript{501}

ERMA (and its related Maori advisory committee Nga Kaihautu Tikanga Taiao) were disestablished under the Environmental Protection Authority Act 2011\textsuperscript{502} and replaced by a new crown agent – the Environmental Protection Authority (together with a new Maori Advisory Committee).\textsuperscript{503} While disestablished, the creation of ERMA is still significant in marking a move towards using independent crown entities for regulation in environmental health management.

The RMA’s strength and uniqueness were found in its broad framework integrating “land use planning and environmental management, ‘one-stop shop’ consent processing, broad public participation provisions” and the creation of a specialised Environmental Court.\textsuperscript{504} The emphasis on public participation together with the appeal

\textsuperscript{496} Crown Entities Act 2004, sch 2. Note ERMA was repealed and disestablished on the 1\textsuperscript{st} of July 2011 by s 53(1) of the Environmental Protection Authority Act 2011.
\textsuperscript{497} Crown Entities Act 2004, s 7.
\textsuperscript{498} Hazardous Substances and New Organisms Act 1996, s 11(b)(ii).
\textsuperscript{499} Hazardous Substances and New Organisms Act 1996, s 11.
\textsuperscript{500} Hazardous Substances and New Organisms Act 1996, s 11(1)(a)(ii).
\textsuperscript{501} Hazardous Substances and New Organisms Act 1996, s 16.
\textsuperscript{502} ERMA was disestablished in s 26, ERMA committees were disestablished in s 27, and Nga Kaihautu Tikanga Taiao was disestablished in s 28 of the Environmental Protection Authority Act 2011.
\textsuperscript{503} The Maori Advisory Committee is discussed further in chapter 8, \textit{Environmental Health – Maori Perspective}.
\textsuperscript{504} Raewyn Peart \textit{Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand} (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 11.
process to the Environment Court allowed for a ‘check and balance’ on local government performance.\textsuperscript{505}

However the broadness of the Act also caused implementation issues at local government level. Local government was expected to develop localised policies and plans to monitor their regions as well as implementing the policies and carrying out compliance. This allowed regional flexibility but also lead to unnecessary variation. This issue was partly addressed in the 2005 resource management reforms\textsuperscript{506} where a “hierarchy of planning documents” was introduced in new sections of part 5 of the RMA.

The hierarchy, requiring district plans to give effect to regional plans (and both to give effect to national plans) highlighted the push for national consistency and clarity for local government in their planning initiatives.

\subsection*{5.2 HIERARCHY OF PLANNING DOCUMENTS}

Acknowledging the hierarchy of planning documents between local and central government provides clarity on the roles of each party in the environmental health framework. Two key hierarchies relevant to environmental health can be identified. The first is provided for in the RMA involving environmental planning documents. The Ministry for the Environment and Ministry of Conservation create national instruments\textsuperscript{507} while regional councils are responsible for regional policy statements\textsuperscript{508} and regional plans,\textsuperscript{509} and territorial authorities produce district plans.\textsuperscript{510} The second is provided for in the Health Act 1956 and the Health and the New Zealand Public Health and Disability Act 2000 (NZPHDA) involving health planning documents. The Ministry of Health provides the primary role at central government level while district health boards (and to a lesser extent territorial authorities) provide local planning documents. A discussion and analysis of both hierarchies is provided here.

\textsuperscript{505} Raewyn Peart *Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand* (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 11.
\textsuperscript{506} Change was implemented on the 10\textsuperscript{th} of August 2005 by s 29 of the Resource Management Amendment Act 2005 with further substitutions on the 1\textsuperscript{st} of October 2009 with the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
\textsuperscript{507} National Environmental Standards and National Policy Statements.
\textsuperscript{508} Resource Management Act 1991, s 60.
\textsuperscript{509} Resource Management Act 1991, s 63.
\textsuperscript{510} Resource Management Act 1991, s 72.
5.2.1 Hierarchy of Environmental Planning Documents

In order to facilitate integrated management, both local and regional councils have positive obligations to establish, implement and review “objectives, policies and methods to achieve integrated management”. Integration is also aided by the hierarchy of planning documents produced at national, regional and local level. Core principles of the Act, together with national and regional policy statements, and regional and district plans, provide policy guidelines to aid consent authorities (regional councils and territorial authorities) in determining what activities or practices are allowable. Creating a framework based on principles and policy allows for greater flexibility (by having room for discretion), but in turn emphasises the importance of quality decision making in effective environmental management.

The hierarchy of planning documents provides a simple explanation as to how the framework hierarchy operates:

An understanding of the above hierarchy provides important insight into understanding central government functions. For example, a core function of central government (through the Minister for the Environment and the Minister of Conservation) is the ability to create national environmental standards (NES) and national policy statements (NPS) which must be given effect in regional policy statements, plans and district plans. District plans must also be consistent with regional policy statements and plans. Where conflicts arise the hierarchy ensures that district and regional instruments will be subservient to national direction. Accordingly a national approach or direction (where a national approach or direction is evident) is always adopted and implemented at lower levels of government. Before a resource management decision is made the planning

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511 Resource Management Act 1991, s 30(1)(a) (for Regional Councils) and s 31(1)(a) (for Territorial Authorities).
512 Resource Management Act 1991, ss 5 to 8 (Part II).
documents are consulted to ensure that any decision complies with each of the documents in the hierarchy.

The Governor-General can create NES to prescribe “standards, methods and requirements”514 for the control of water quality,515 air quality,516 soil quality517 and noise518 (in relation to environmental health matters). There is no compulsory obligation to create NES and these are developed at the Minister for the Environment’s discretion (who provides the recommendation to the Governor-General). Under s43A of the Act these NES can prohibit or allow519 activities while specifying qualitative, quantitative and discharge standards.520

The RMA does not provide a statutory process for the preparation of NES. However s 44(1) of the Act provides basic steps for the Minister (in regards to reporting and consultation) that must be followed prior to making a recommendation to the Governor-General.521 Implementation methods and exemptions can be made with the consent of the executive council after being recommended by the Minister.522

NPS differ from NES in that they “enable central government to establish objectives and policies on resource management matters of national significance”.523 Section 45(1) contains broad wording that encourages NPS where they are “relevant to achieving the purpose of th[e] Act”.524 While the creation of NPS is optional (at the discretion of the Minister for the Environment), the preservation of the coastal environment is separated from other matters of national significance525 with the Minister of Conservation under a direct instruction to create at least one coastal policy statement (following the processes laid out for NPS).

514 Resource Management Act 1991, s 43(1).
519 Resource Management Act 1991, s 43A(1)(a) & (b).
521 Minor changes and error corrections are exempt from this process under s 44(3)(a) and (b) of the Resource Management Act 1991.
525 Resource Management Act 1991, ss 56 to 58A.
While there is no prescribed content for NPS,\textsuperscript{526} there are set processes to establishing NPS under s 46A of the Act. The process outlined in either s 46A(1)(a)\textsuperscript{527} or s 46A(1)(b)\textsuperscript{528} must be followed. Section 46A(1)(a) provides a set statutory based process outlined in ss 47 to 52 of the Act. The Minister appoints a Board of Inquiry (setting terms of reference) and the Board leads an inquiry on the proposed NPS and reports back to the Minister.\textsuperscript{529} The Board publicly notifies the proposed NPS\textsuperscript{530} and submissions are gathered prior to a hearing taking place.\textsuperscript{531}

While this process appears to be lead through an independent Board of Inquiry, the Ministry has substantial power throughout this time. For example, it is the Minister who establishes the Board and sets the terms of reference (hence creating the parameters of any submissions or discussion). Under the Resource Management (Simplifying and Streamlining) Amendment Act 2009 s 47A was inserted giving the Minister power to suspend any inquiry\textsuperscript{532} (with public notification) and the Board must follow this direction without question.\textsuperscript{533} The Minister also has the ability to provide the board with “any additional material”\textsuperscript{534} to consider in its decision making and the Minister also has the power to be heard at any hearing held by the Board of Inquiry\textsuperscript{535} (regardless of any restrictions or requirements normally required for a party to be heard under the Act).\textsuperscript{536}

The Board of Inquiry’s report process appears comprehensive. The report is produced taking into account not only the submissions and evidence presented at the hearing, but also considering any additional material provided by the Minister (including a submission). The Board is directed to take into account matters under part two of the Act which creates a hierarchy of considerations requiring recognition and provision for matters of national importance\textsuperscript{537} and the Treaty of Waitangi,\textsuperscript{538} while providing an

\textsuperscript{527} Requiring adherence to ss 47 to 52 of the Resource Management Act 1991.
\textsuperscript{528} Resource Management Act 1991.
\textsuperscript{529} Resource Management Act 1991, s 47(1) and (2).
\textsuperscript{530} Resource Management Act 1991, s 48.
\textsuperscript{531} Resource Management Act 1991, ss 49 and 50.
\textsuperscript{532} Resource Management Act 1991, s 47A(1).
\textsuperscript{533} Resource Management Act 1991, s 47A(3).
\textsuperscript{534} Resource Management Act 1991, s 47A(1)(b).
\textsuperscript{535} Resource Management Act 1991, s 50(3).
\textsuperscript{536} These are outlined under ss 39 to 42 of the Resource Management Act 1991.
\textsuperscript{537} Resource Management Act 1991, s 6.
\textsuperscript{538} Resource Management Act 1991, s 8.
overall judgement with a paramount focus on the purpose of the Act, being the sustainable management of physical and natural resources. Under s 51(1)(e) broad language is used to allow “any other relevant matter” to be considered in the Board’s report.

However the effectiveness of the Board’s report is restricted in two ways. First the Board of Inquiry’s report and any recommendations that the Board makes must be within the terms of reference provided by the Minister (which may have a limiting effect on matters that are allowed to be considered) and secondly, while the Minister must consider the report, the Minister is not compelled to follow the Board’s recommendations. Section 52 of the Act states that as long as the Minister considers the report, the Minister “may make any changes, or no changes, to the proposed national policy statement as he or she thinks fit” including the withdrawal of all or part of the NPS. This gives the Minister ultimate control of the creation of an NPS (subject to the Governor-General giving end approval of the NPS on the Minister’s recommendation). This creates a broad power at central government level and would ultimately mean that the Minister may create NPS that are in opposition to public submissions or the advice of the Board. While this is technically possible there has been no example of this actually occurring. It appears this is Parliament’s way of preserving their centralised control in this area (without demonstrating a necessary intention to use it).

All parties (including the Minister) who are exercising functions or duties under the Act must take into account part 2 obligations (ss 5 to 8 as discussed above) and accordingly any decision the Minister makes on a NPS must be made taking into account these same factors that the Board considers in their report. This provides some element of consistency between the Board’s recommendations and the Minister’s decision.

The choice in process is up to the Minister and is based on consideration of several factors, including the need for urgency in creating the NPS, similarities of the NPS to existing national, regional and district planning instruments and the extent of previous public consultation and debate. In 2005 this process was streamlined as part of the

540 Resource Management Act 1991, s 52(1).
542 Resource Management Act 1991, s 46A(2)(a)(b) and (c).
simplification reforms\textsuperscript{543} with s 46B inserted. This section provided central government with the ability to incorporate “material by reference under schedule 1AA”\textsuperscript{544} into a national policy statement. Further discussion of NES and NPS as central government functions is provided later on in this chapter.

5.2.2 Central Government Planning Documents – National Direction and Consistency

The RMA provides for central government supremacy by stating throughout the Act that all regional and district planning instruments are subservient and must be consistent with national instruments. Rules, consents and bylaws cannot be more lenient\textsuperscript{545} than a NES, but may be more stringent (if expressly provided for in the NES)\textsuperscript{546}. While NES are not retrospective, allowing existing resource consents to prevail over standards,\textsuperscript{547} the consent authority must consider relevant NES in future applications. NES will also be relevant to the conditions of water, coastal and discharge permits that were established prior to the NES, but come up for review under s 128(1)(ba).\textsuperscript{548}

The standards allow for a uniform national minimum standard to be applied. In turn a local authority must ensure that its plans comply with the minimum standards set. If there is conflict between the local authority plan and the NES the local authority must amend its plan to ensure national consistency.\textsuperscript{549} The rule of a plan will be deemed to “conflict” with a NES where it is more stringent than the NES (without this stringency being expressly provided for in the said standard)\textsuperscript{550} or more lenient.\textsuperscript{551} The required plan change bypasses the normal requirement for public notification, hearing and appeal and will have immediate effect.\textsuperscript{552} Where a rule or resource consent is more stringent (and this is expressly allowed for in the NES) it may prevail over the standard which sets a national minimum.\textsuperscript{553}

\textsuperscript{543} Resource Management Amendment Act 2005 (2005 No. 87), s 33.
\textsuperscript{544} Resource Management Act 1991, s 46B.
\textsuperscript{545} Resource Management Act 1991, s 43B(3) (for rules and consents) and s 43E(1) (for bylaws).
\textsuperscript{546} Resource Management Act 1991, s 43B(1) (for rules and consents) and s 43E(3) (for bylaws).
\textsuperscript{547} Resource Management Act 1991, s 43B(5).
\textsuperscript{548} Resource Management Act 1991, s 43B(6).
\textsuperscript{549} Resource Management Act 1991, ss 43B & 44A.
\textsuperscript{550} Resource Management Act 1991, s 44A(2)(a)(i) & (ii).
\textsuperscript{551} Resource Management Act 1991, s 44A(2)(b).
\textsuperscript{552} National Environmental Standards <http://www.rmaguide.org.nz/rma/plandocs/envstd.cfm?section=effects >.
\textsuperscript{553} Resource Management Act 1991, s 43B(1).
Interestingly no analysis takes place to determine which instrument (the NES or regional or district plan) is the most effective at achieving the objectives of the Act. Instead the local authority must always change its documents and be subservient.\textsuperscript{554} This was confirmed in ss 44A(7) and (8) of the Act which state that local authorities must observe NES and “enforce the observance of [NES] to the extent to which their powers enable them to do so”.\textsuperscript{555} Similarly with NPS, regional policy statements, plans and district plans must recognise and give effect to NPS\textsuperscript{556} and be amended so the “objectives and policies” of the NPS are given effect\textsuperscript{557} and must “take any other action that is specified in the [NPS]”.\textsuperscript{558}

As well as demanding consistency by regional policy statements, plans and district plans with NES and NPS, s 104(1)(b) of the Act reinforces the importance of national planning instruments in the resource consent process. Before a resource consent can be granted the consent authority must have regard to:\textsuperscript{559}

(a) any relevant provisions of –

(i) a national environmental standard:
(ii) other regulations:
(iii) a national policy statement:
(iv) a New Zealand coastal policy statement:
(v) a regional policy statement or proposed regional policy statement;
(vi) a plan or proposed plan…

The above provisions of the RMA prove that any tier of government handling a resource management issue will also be instructed to take national instruments into account through either direct consideration of any relevant NES or NPS in assessing a resource consent application (through s104(1)(b)) or inadvertent application of national policy through regional and district plans (which comply with national direction).

Accordingly the hierarchy of planning documents provides a simple check and balance to ensure internal consistency between the various layers of government. While this may not address issues of overlapping jurisdiction or gaps in jurisdiction in the

\textsuperscript{554} Resource Management Act 1991, s 44A(5).
\textsuperscript{555} Resource Management Act 1991, s 44A(8).
\textsuperscript{556} Resource Management Act 1991, ss 62(3), 67(3) & 75(3).
\textsuperscript{557} Resource Management Act 1991, ss 55(1) & 55(2).
\textsuperscript{558} Resource Management Act 1991, s 55(3).
\textsuperscript{559} Resource Management Act 1991, s 104(1)(b).
environmental health framework it does address the issue of direct inconsistencies between tiers of government and how these are addressed.

5.2.3 Dealing with Inconsistencies between Planning Instruments

While the obligation to comply with national instruments has been discussed above, this relies on regional and territorial authorities to pick up and amend these inconsistencies either at the planning stage (for proposed regional and district plans) or upon the introduction of new national instruments. While larger regional and territorial authorities may have employees dedicated to adjusting plans in accordance with each change or amendment of national instruments, smaller territorial authorities may struggle with the duty to amend plans. Mistakes could occur if a regional or district plan rule that is inconsistent with new national instruments is applied (notwithstanding direct obligations under the RMA to ensure integrated management of natural and physical resources).560

In order to address this issue schedule one of the RMA (which outlines consultation requirements for the “preparation and change of policy statements and plans by local authorities”)561 requires local authorities to consult with central government, namely the Minister for the Environment562 and “any other Ministers of the Crown who may be affected by the policy statement or plan”.563 During the course of consultation it could be reasonably expected that inconsistencies would be picked up and dealt with under local authority’s obligations to comply with national instruments in s 55(2) of the Act.

As the Minister of Conservation collaborates with regional authorities in creating regional coastal plans (and the Minister has final approval on any regional coastal plan)564 inconsistencies in this particular area are not likely to be an issue. However in considering other regional and district planning instruments the RMA provides central government with the power to deal with this issue under s 25A (when it arises), or, via a declaration under s 310.565

Declarations may be sought from the Environment Court to clarify matters under the RMA. A declaration may be used for clarification to declare the “existence or extent of any function, power, right, or duty” under the RMA. Declarations may also be used to declare that “provision or proposed provision” of a regional policy statement, regional plan or district plan “does not, or is not likely to, give effect to a provision or proposed provision of a national policy statement, New Zealand coastal policy statement or regional policy statement.

This process can act as a backstop to ensure that national instruments are complied with. However, a declaration is not an enforcement measure in itself and (if an inconsistency is discovered) an enforcement order is required under s 319 of the Act. Under s 314(1)(f) the Environment Court may determine that one of the “requirements of schedule one [has] not been observed in respect of a policy statement or a plan” (such as consultation with central government). The Environment Court has the power to “direct compliance” with schedule one requirements or “suspend the whole or any part of the policy statement or plan”. Section 25A and 25B, which provide the Minister for the Environment with the power to direct preparation of a plan, change, variation or to direct a review by a regional council or territorial authority of its plans may also be used to ensure consistency.

5.2.4 Hierarchy of Health Planning Documents

In contrast to environmental planning documents, the health planning documents hierarchy is comparatively straightforward due to a simpler arrangement at local government level. The Ministry of Health (MoH) adopts a policy driven role and is
focussed on gathering information from local government through district health boards (DHBs) and in consultation with its various advisory committees. This information is then used to create health targets and establish (and revise) national health and disability strategies. Each year the Minister provides a letter of expectations for DHBs outlining the health targets and national goals. Under s 38 of the NZPHDA the DHBs must produce a yearly plan which must address “local, regional and national needs for health services”. The plans must “reflect the overall direction set out in, and not be inconsistent with, the New Zealand health strategy and the New Zealand disability strategy” or any regulation.

Before a DHB’s plan can be finalised, the Minister will check the plan to ensure that he or she is “satisfied that the requirements of subs (2) and (3) have been met”. Accordingly the Minister must be satisfied that the national direction incorporated in strategies and regulations has been followed before he or she will sign the plan. The plan only becomes finalised once signed by the Minister and the DHBs who are a party to the plan. This yearly checking process and the close involvement of the Minister in each DHB’s plan provides a solid safeguard to ensure consistency in national direction. The use of regional service plans also provide a national influence with the National Health Board seeking DHB input to ensure plans reflect national consistency while being locally driven. In contrast to environmental planning, this system seems more simplistic. However, this is because there are 20 DHBs for the Minister to coordinate with as opposed to environmental planning where regional councils and territorial authorities produce several plans and policies.

Another significant difference is that the Ministry of Health is compelled to create national guidance by setting targets and producing national health strategy documents.

582 New Zealand Public Health and Disability Act 2000, s 23(1)(k).
583 Committees are established under the New Zealand Public Health and Disability Act 2000. National Advisory Committee on Health and Disability (s 13); Public Health Advisory Committee (s 14); Health Workforce Advisory Committee (s 15); and the National Advisory Committee on Health and Disability Support Services Ethics (s 16). See Committees table in the appendices of this thesis.
584 New Zealand Public Health and Disability Act 2000, s 38(2)(i).
586 New Zealand Public Health and Disability Act 2000, s 38(3).
587 New Zealand Public Health and Disability Act 2000, s 38(4).
588 New Zealand Public Health and Disability Act 2000, s 38(4)(b).
589 Discussed further in chapter 6, Environmental Health Functions of Local Government.
590 New Zealand Public Health and Disability Act 2000, s 39.
In contrast, the NES provisions are optional, allowing central government to produce NES only if and when it desires to.

5.2.5 Comparing both Hierarchies of Planning Documents

Both hierarchies provide a ‘top down’ approach with local government planning documents required to be consistent with central government planning documents. Enforcement mechanisms are in place to ensure compliance.

Both hierarchies appear quite separate from each other. While there has been a focus from central government to local government to provide top down consistency there is little evidence of connections across the same tier (i.e. district health boards and territorial authorities at local government level). This lateral connection would provide benefit by ensuring consistency across environmental health planning areas. Only minor connections can be made, aside from the general commitment of parties to work with other parties where necessary to fulfil their duties. Only two lateral connections are expressly stated in legislation under the Health Act 1956 and the Local Government (Auckland Council) Act 2009. This issue of lateral connections at the local government level is discussed further in Chapter 6, Environmental Health Functions of Local Government.

5.2.6 Other Issues

The RMA provides clear and comprehensive provisions outlining the hierarchy of planning documents and ensuring consistency with NES and NPS being incorporated at regional and local level. With regional and district plans being compulsory591 there is ample opportunity for central government to influence the direction of regional and district initiatives. On this basis it appears to be a workable system of integrated management. However the “quality” of local government planning documents can also be an issue in environmental health management.

The Local Government Act 2002 signalled a “more collaborative government approach”592 giving local government focus with more involvement in planning for

592 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 12.
“community outcomes” and “community responsibility”. The Act instilled local government with the purpose of enabling “democratic local decision-making” and promoting the “social, economic, environmental and cultural well-being of communities in the present and for the future”. The local focus was emphasised in that a local authority “must exercise its powers” for the benefit of its respective region.

Local authorities struggled to draft quality plans with strong rules (backed by compliance measures) and monitored by clear performance measures. The Environmental Defence Society (EDS) referred to this as a key weakness in the current environmental planning framework concluding that the situation was compounded by the “ambitious nature of the RMA” together with the need for “a clear articulation of national policy”.

While some fault lies with government authorities and the way the roles were carried out, the orientation of the RMA tends to produce plans which are “response” based and focus on controlling applications (addressing individual applications and using conditions to control pollution and mitigate negative environmental effects) rather than being strategic and focusing on future goals for an area. This is illustrated by the relative success of councils in addressing individual sources of pollution, but the inability to successfully address cumulative effects in the environment.

For example, in granting a consent, a local authority may consider the application in light of the existing environment and will often use conditions to mitigate adverse effects. It must balance its obligations under part 2 of the RMA to provide for the sustainable management of resources in a manner that “enables people and communities to provide for their social, economic and cultural well-being”.

593 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 12.
594 Local Government Act 2002, s 10(a).
595 Local Government Act 2002, s 10(b).
596 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 14.
597 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009).
598 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 14.
599 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 14.
600 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 14.
each application is heard separately a precedent effect can be relevant under s 104(1)(c) provided it does not undermine the objectives and policies of the local plan. Over time the granting of consents (forming part of the existing environment) can result in cumulative effects in the environment, primarily as the role of councils has been so focussed on individual plans rather than strategic planning and goal setting for an area.

Various approaches have been suggested for addressing these concerns and are discussed throughout this chapter. It is clear that increasing national direction, advice from central government (particularly for smaller local authorities which may lack expert advice) and creating comparable performance measures will aid in local government performance.

Several recent initiatives may aid in addressing these problems. These include a shift to a collaborative approach with the introduction of the Environmental Protection Authority and the introduction of standard performance measures.

However the strength of the hierarchy (and its positive effect on consistency) relies on the premise that there is an interest by central government in actually creating NES and NPS and that national instruments are created across a variety of environmental health areas to create national direction at lower levels. The response from local government shows a perceived lack of national guidance. This opinion is supported by the fact that while the power to establish NES was provided in the RMA in 1991, the “first formal regulations prescribing national environmental standards” were not issued until 2004.

The thirteen year time span before the tools first use suggests a reluctance on the part of central government to assert “national-led control” over an area traditionally managed at local government level. This reluctance to intervene at central government level may have been due to the National Party led Government in power at the time passing the RMA legislation with minimal support. In 2004 national regulation gained

604 This being the Resource Management (National Environmental Standards Relating to certain Air Pollutants, Dioxins, and other Toxics) Regulations 2004 (SR 2004/309) which has since been renamed The National Environmental Standards for Air Quality.
momentum with the Labour led government, resulting in the first NES – the Resource Management (National Environmental Standards Relating to certain Air Pollutants, Dioxins and other Toxins) Regulations 2004 which provided 15 national standards on air quality and air pollutants.\textsuperscript{606} This NES has since been renamed as the Resource Management (National Environmental Standard for Air Quality) Regulations 2004.

5.2.7 Resource Management (National Environmental Standards for Air Quality) Regulations 2004 - The first example of a National Environmental Standard

Prior to the Resource Management (National Environmental Standards for Air Quality) Regulations 2004,\textsuperscript{607} air quality management was a local government function under the RMA. Regional authorities were responsible for the development and implementation of regional policy statements and plans, and for monitoring and assessing air quality.\textsuperscript{608} While national guidance was available in the “Ambient Air Quality Guidelines” and were used often in decision making, these guidelines were non-statutory and accordingly were not legally enforceable and did not ensure a national minimum standard.

This regional variation was a disadvantage in air quality management. Any benefit of local flexibility was outweighed by implementation issues. The regional variations in air quality management created confusion for industry and the community. Restrictions had a limited effect in decreasing air pollution when industry could relocate to areas with more lenient air quality standards. This could create economic pressure on regional authorities to provide lower standards to attract or retain industry. Regional variation in approach over the artificial divides of regional authorities failed to consider that air pollution was not geographically contained by the place of origin.

\textsuperscript{605} See discussion of local government / central government tension in this chapter.
\textsuperscript{606} The National Environmental Standards for Air Quality (SR 2004/309).
\textsuperscript{607} This Standard was original called the Resource Management (National Environmental Standards Relating to certain Air Pollutants, Dioxins, and other Toxics) Regulations 2004 (SR 2004/309) prior to the name being simplified to the National Environmental Standards on Air Quality.
As well as creating confusion with different rules in different regions there was resource inefficiency by increased consent processing costs and legal expenses “where litigation of the same issues occur[ed] region by region”.609

To encourage community’s participation and clarify rules, the local authority rules were often coupled with an education campaign to explain how to minimise air pollution by using burners effectively. However the effect of this was largely eroded by the regional variation (even though education remains a powerful tool for the government).

This lack of clarity and national direction, regional competition, resource inefficiency and adverse health and environmental effects was addressed by the introduction of a national environmental standard for air quality. This addressed the health risks of contaminants, recognised public concern and created a “level playing field”610 through national consistency.

Devolution of decision making encourages locally directed environmental health management. However a balancing must occur between local and national interests considering the “economic and social well-being”611 of the community.

The creation of a NES on Air Quality demonstrates that sometimes an “agreed compromise” is an unsuitable management solution and accordingly “a trade-off is required to protect an environment or health ‘bottom line’”.612

As discussed above, any effective regulation of air quality would require national implementation to achieve a minimal level of health protection.

The proposed national standard focused on urban areas and aimed to:613

- Improve the consistency and certainty of restrictions on the type of coal and wood heating appliance allowed into homes within urban areas.

- Improve air quality over time by ensuring the replacement of older burners or open fires with lower emitting burners.

Home heating was targeted as a major contributor to air pollution contaminates which are harmful to health, with heating fire pollution believed to cause “between 350 – 800

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611 Environment New Zealand Draft Conclusion Chapter: Chapter 13 (Environment New Zealand, 2007) at 10.
612 Environment New Zealand Draft Conclusion Chapter: Chapter 13 (Environment New Zealand, 2007) at 10.
premature deaths each year in New Zealand.\footnote{Proposed Prohibited Standards (September 2003) <http://www.mfe.govt.nz/laws/rma/standards> at 4.} Accordingly the right of the consumer to heat their home was balanced with health concerns which could be significantly relieved by choosing clean heating alternatives.\footnote{Proposed Prohibited Standards (September 2003) <http://www.mfe.govt.nz/laws/rma/standards> at 4.}

The proposed air standards did not envisage tackling air quality issues exclusively at central government level. Instead the importance of intersectional cooperation was recognised. Local and regional government were effectively carrying out checks and monitoring, the imposition of a NES would complement their role and be implemented through “existing council compliance and enforcement mechanisms”.\footnote{Proposed Prohibited Standards (September 2003) <http://www.mfe.govt.nz/laws/rma/standards> at 1.} For example, installation requirements would be specified in regional plans, district plans and consent provisions regulating in a three layer approach.

The resulting NES addressed many of the concerns by providing consistency, clarifying requirements and guaranteeing the same minimal standard of legally enforceable air pollution protection for all communities. The Act created ambient air quality standards, concentration limits and monitoring requirements.

Following the implementation of the NES and consultation with local government an amendment was produced in July 2005 which provided more local authority flexibility in meeting the “ambient fine particle (PM10) standard by 1\textsuperscript{st} September 2013”.\footnote{National Environmental Standards for Air Quality <http://www.mfe.govt.nz/laws/standards/air-quality-standards.html> at 1.}

The amendment further clarifies the resource consent situation by stating that the restriction of granting of resource consents applies only to significant discharges. This amendment therefore avoids litigation to clarify this point.\footnote{National Environmental Standards for Air Quality <http://www.mfe.govt.nz/laws/standards/air-quality-standards.html> at 1.}

A further review of the NES for air quality was announced on the 10\textsuperscript{th} of June 2009.\footnote{Review of the National Environmental Standards for Air Quality <http://www.mfe.govt.nz/laws/standards/review-nes-air-quality.html>.} This provided tighter restrictions by stating that if air quality standards were not met by 2013 there would be restrictions on industry. This was interesting as the disciplinary focus was primarily on industry, even though industry pollutants were less significant than household pollutants.
The central government approach to air quality demonstrates the three main tools of central government – legislation, incentive and education. The Ministry for the Environments “Clean Air Programme”620 combines NES for air quality (which controls behaviour) with good practice guidance and information on home heating (to educate and encourage positive behaviour). Incentives are also offered to encourage individuals to swap to cleaner forms of heating. Finally air quality indicators and research on air quality is conducted on central government level to further educate the public, provide an equal level of information to local authorities and aid in target planning (and amend NES as necessary).

While the creation of the first NES signalled more interest in a prescriptive approach, development of NES remains slow. Only four standards have followed. The Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007621 and the Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2008,622 both came into force in 2008. The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 came into force in 2010 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into force in 2012. A former proposed National Environmental Standard on water takes was also brought into force via inclusion in s 360(1)(2) of the RMA. The introduction of NES in 2010 and 2012 has been a welcome addition to national direction in environmental health management. Now the core environmental health areas of air quality, water quality and land contamination are all subject to national instruments which will aid local authorities in carrying out their role. However further initiatives focusing on waste and sanitation would ensure that all key aspects of environmental health were considered on a national scale.

While only five standards have been created since 2004, there are currently proposed national environmental standards on ecological flows and water levels, future sea-level rise623 and plantation forestry624 under consideration by the Ministry for the

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621 This standard came into force on the 20th of June 2008.
622 This standard came into force on the 9th of October 2008.
623 The need for a National Environmental Standard on sea level rise will be decided once the Climate Change Working Group provides an update to the Ministry for the Environment in 2013 (after the date of this thesis).
Environment. This may represent a “sea change” by central government and an increased interest in national instruments. This may be positive, but care must be taken to ensure that local government has sufficient input and freedom to cater to their individual communities with local variation (where relevant).

Development has been ad hoc with no official strategy for NES development. There appears to be no set guidelines which set out what makes an issue worthy of a NES. While there is a process that outlines consultation during the drafting of the NES, there is no method prescribed in the RMA for determining which areas are worthy for consideration. Many areas which impact on environmental health are governed by voluntary guidelines which outline recommendations for industries in carrying out their practice in a way which protects public health and the environment. However failure of the guidelines to regulate effectively, is not in itself sufficient to invoke central government regulation in an area. The likely process would involve the identification of an area that was being poorly regulated at local government level, or was adversely affected by regional variation in approach. Once an area is identified, the Ministry would be obliged to consider the reasons for the inefficiencies and potential solutions. It may be that the current guidelines are acceptable but are poorly applied, in which case central government could work with local government to improve implementation or could work within the area to create awareness of the regulations among industry and consumers. The area of NES would benefit from guidelines (such as the process described above) being established. Currently, the only official process is around financial concerns.

Where the Minister for the Environment believes a NES is necessary, s 32 of the RMA requires a “cost-benefit analysis”\textsuperscript{625} which requires the Minister to consider the objectives and policies of any proposed NES and whether the creation of an NES is the most effective way to achieve the objectives identified.\textsuperscript{626} For example, in 2010 a proposed National Environmental Standard for on-site Wastewater Systems was withdrawn following its cost-benefit analysis, as Cabinet determined the proposed NES “would create inefficient and essentially ineffective regulation”.\textsuperscript{627} The analysis

\begin{footnotesize}
\textsuperscript{625} Resource Management Act 1991, s 32.
\textsuperscript{626} Resource Management Act 1991, s 32(3).
\end{footnotesize}
showed that the increase in compliance costs outweighed any health or environmental benefits on a 3:1 ratio making the process cost prohibitive.\textsuperscript{628}

Following cost-benefit analysis, a Regulatory Impact Statement for the proposed NES must also be prepared. If the Minister for the Environment recommends the making of a NES,\textsuperscript{629} the Minister must provide for public notification and submissions before a recommendation can be made to the Governor-General to make an NES.\textsuperscript{630}

While the exact process is not currently prescribed in statute the government plans to address this in the current law reforms under the Resource Management (Simplifying and Streamlining) Act 2009.

This lack of national direction may be addressed by the Environmental Protection Authority taking an increased interest in NES and NPS (provided the opportunity to create national instruments is exercised and sufficient guidance is in place to ensure consistency in approach and co-ordination between layers of government).

While local government functions are discussed in the next chapter of this thesis a brief discussion is relevant here. It is compulsory for regional authorities to produce policy statements and plans and for territorial authorities to produce plans. This would allow any NES or NPS to quickly filter down to district level and would create rules to implement the national policy in a practical manner. Therefore it appears the use of NES and NPS is an under-utilised vehicle for providing national direction and addressing some of the issues in environmental health such as a fragmented framework with unreasonable variations in approach.

\textbf{5.2.8 Compulsory Planning Instruments}

The compulsory aspect of regional policy statements and regional and district plans ensures coordination at regional and district layers. Regional and territorial authorities are also more likely to have experience in working together due to being in close proximity and a splitting of responsibilities meaning that one activity may require consents from both consent authorities. This integration is often facilitated with joint


\textsuperscript{629} Resource Management Act 1991, s 24(b).

\textsuperscript{630} Resource Management Act 1991, s 44.
hearings giving parties the opportunity to work together. For example, if a person is building a house, they may submit a resource consent application for land use at district council level (covering lighting squares, area coverage etc) and a resource consent at regional council level (covering waste water and sewerage).

This coordination at the lower levels of government is supported by the RMA\textsuperscript{631} and the Local Government Act 2002 (LGA). Under the LGA “co-ordination of responsibilities of local authorities” is encouraged by triennial agreements\textsuperscript{632} which contain “protocols for communication and coordination”\textsuperscript{633} between local authorities within each region (and includes consultation processes).\textsuperscript{634} Where regional councils propose new activities they are obligated to advise both central government and territorial authorities in the region.\textsuperscript{635} Territorial authorities are given the ability to object\textsuperscript{636} and if agreement is not reached mediation can be used.\textsuperscript{637} If mediation is unsuccessful a binding decision can be made by the Minister\textsuperscript{638} upon advice from the Local Government Commission and other affected Ministers.\textsuperscript{639} This process ensures cooperation, or at least awareness, between parties of other’s activities. Central government is used as a backstop where parties do not agree.

However there is no statutory requirement for central government to carry out a similar consultation process with local government. Therefore even though coordination is desirable it is not legally enforceable. Issues with collaboration and coordination of parties are reoccurring themes in this area.

5.3 KEY TOOLS OF CENTRAL GOVERNMENT IN ENVIRONMENTAL HEALTH

While most implementation and management occurs at local government level, several parties at central government perform key roles. The core ministries involved in

\begin{itemize}
  \item Resource Management Act 1991, sch 1, s 3A(1).
  \item Local Government Act 2002, s 15.
  \item Local Government Act 2002, s 15(1).
  \item Local Government Act 2002, s 15(3). Under the RMA (in addition to National Environmental Standards) there is a proposal to introduce national templates for the creation of formal plans or strategies. This national direction through templates aims to ensure regional consistency in planning documents.
  \item Local Government Act 2002, s 16(2)(a).
  \item Local Government Act 2002, s 16(3)(c).
  \item Local Government Act 2002, s 16(4).
  \item Local Government Act 2002, s 16(6).
  \item Local Government Act 2002, s 16(7).
\end{itemize}
environmental health are the Ministry of Health (focusing on public health policy) and the Ministry for the Environment (focusing on environmental policy). Both Ministries’ roles have considerable overlap when providing for environmental health. The Environmental Protection Authority is discussed separately as it has the potential to become an important contributor at central government level with an emerging role in national planning instruments. The Department of Conservation has a more minor role in regards to coastal management (which is shared with regional councils). The Parliamentary Commissioner for the Environment (while independent of the government) also provides an important review and recommendation role.

A primary tool for central government is legislation which provides the ability to stipulate requirements and regulate activities, establishes statutory duties to monitor activities and provides enforcement mechanisms. The legislative tool provides central government with the ability to influence determinants of health positively through monitoring, administrating and enforcing behaviour.

Central government ministries are responsible for overseeing the implementation of legislation which is pertinent to their interests (even if the majority of duties under that legislation should lie with local government). Accordingly the Ministry of Health is primarily responsible for implementation and development of the Health Act 1956 and the New Zealand Public Health and Disability Act 2000 (as its core legislation) and the Ministry for the Environment is primarily responsible for the implementation of the Resource Management Act 1991 (as its core legislation).

5.4 MINISTRY OF HEALTH

The Health Act 1956 contains the core environmental health functions and powers of the Ministry of Health. Part One of the Act defines the administration functions of respective central government parties and instils in the Ministry of Health the function of “improving, promoting and protecting public health”. The New Zealand Public Health and Disability Act 2000 (NZPHDA) complements the role of the Health Act 1956. The Health Act provides the practical aspect of regulation and outlines how environmental health will be addressed at the ground level. The NZPHDA provides for the establishment of the National Advisory Committee and the Public Health Advisory
Committee that will provide advice and guidance to the Ministry of Health to allow central government to provide national planning.

While the Health Act 1956 provides the basic mechanisms for regulation at central and local government level, the NZPHDA provides for public funding and establishment of health services together with a reorganisation of the public health and disability sector641 aimed at achieving the objectives of the Act. These objectives include:642

(b) to achieve for New Zealanders-
   (i) the improvement, promotion and protection of their health:

The level of government response, local, regional, or national depends on “the optimum arrangement for the most effective delivery of properly co-ordinated health services”643. This gives central government the ability to retain functions at a national level if the Crown believes it is best to do so.

5.4.1 Power to Delegate to Local Government and Power to Act as a Local Authority

In brief, most core environmental health functions are delegated to local government level to allow for tailored approaches to environmental health in each area. This provides local government with the responsibility for community planning, the obligation to prevent nuisances and the ability to regulate activities to reduce risks to human health and the environment. Under s 23 of the Health Act 1956, local authorities are given the duty to “improve, promote and protect”644 public health within their individual district. To enable them to fulfil these duties they are delegated bylaw making powers under s 64 of the Act. Environmental health issues, being health issues arising from the physical environment, are covered by the breadth of this section and addressed in detail. Bylaws (which relate to environmental health) include those made for the purpose of “improving, promoting or protecting public health”,645 “preventing or abating nuisances”,646 regulating drainage and sewage,647 regulating offensive trade

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640 Health Act 1956, s 3A.
641 New Zealand Public Health and Disability Act 2000, s 5(1).
642 New Zealand Public Health and Disability Act 2000, s 3(a)(i).
643 New Zealand Public Health and Disability Act 2000, s 3(5).
644 Health Act 1956, s 23.
645 Health Act 1956, s 64(1)(a).
646 Health Act 1956, s 64(1)(a).
647 Health Act 1956, s 64(1)(g).
which may be “offensive, dangerous … or injurious to health”\textsuperscript{648} regulating cleansing and sanitation of public buildings,\textsuperscript{649} sanitary precautions of trade,\textsuperscript{650} preventing disease outbreak from pests,\textsuperscript{651} protecting food and water supply from pollution,\textsuperscript{652} regulating smoke emission\textsuperscript{653} and a general bylaw making power for the effective carrying out of the Act.\textsuperscript{654}

While these specific aspects of environmental health are managed at the micro level by delegation to local government, central government maintains overall control by providing the policy objectives that form the basis of local and national planning, and retaining a guidance role over local government.

While the local government uses their bylaw making powers to regulate environmental health (as stated above), the Ministry of Health retains the ability to act as a local authority to “improve, promote and protect public health”\textsuperscript{655} in areas outside the jurisdiction of local authorities, hereby giving the Ministry the powers and duties of local authorities under s 23 and s 64 of the Act.\textsuperscript{656}

Also, where local authorities are failing to act, either by omitting to appoint Environmental Health Officers or failing to fulfil their duties, central government has retained the power to appoint Health Protection Officers\textsuperscript{657} or Medical Officers of Health\textsuperscript{658} to carry out the role of local authorities (at the cost of that local authority). This includes providing the Director-General with the power to exercise powers and perform duties at the failure of local authorities.\textsuperscript{659} As an alternative to carrying out the duties on behalf of the local authority the Minister may also apply to the High Court for a “writ of mandamus to compel a local authority to perform any duty that the local

\textsuperscript{648} Health Act 1956, ss 64(1)(q) & 54.  
\textsuperscript{649} Health Act 1956, s 64(1)(g).  
\textsuperscript{650} Health Act 1956, s 64(1)(t).  
\textsuperscript{651} Health Act 1956, s 64(1)(u).  
\textsuperscript{652} Health Act 1956, s 64(1)(v).  
\textsuperscript{653} Health Act 1956, s 64(1)(w).  
\textsuperscript{654} Health Act 1956, s 64(1)(y).  
\textsuperscript{655} Health Act 1956, s 8.  
\textsuperscript{656} Health Act 1956, s 8.  
\textsuperscript{657} Health Act 1956, s 28(6).  
\textsuperscript{658} Health Act 1956, s 44.  
\textsuperscript{659} Health Act 1956, s 123(2). Expenses may be recovered from the local authority involved under s 123(5)(6) and (7).
authority has failed to perform” or more likely, a remedy would be sought under the Judicature Act 1972.660

In this way central government has provided a “back stop” to local government by acting where local authorities are not assigned or are not willing to act. This creates the situation where the Minister of Health can effectively override the inaction of the local authority by carrying out work deemed necessary in fulfilling the objectives of the Act and holding the local authorities accountable for any costs incurred or by providing compulsion for them to act.

Other areas of environmental health that may benefit from specialised knowledge and consideration in their planning areas are not delegated to local government. They are ordered by central government to be managed by specialised agencies designed to ensure uniformity in approach across the country. Examples of this type of agency include the New Zealand Food Safety Authority (NZFSA)661 and the now disestablished Environmental Risk Management Authority (Hazardous Substances and New Organisms).662 These regulate nationally while working in with local government to cater for regional variations where required.

While this makes it appear that central government has reduced the scope of its functions to a minor role in environmental health, it is a mixture of this local and central management that underpins the current environmental health framework.

5.4.2 Ministerial Power to Allocate Funding

The Ministry may further influence the actions of local authorities by allocating discretionary funding in regards to refuse disposal, sewerage and water supply663. Under s 27A(1) of the Health Act central government may provide grants and subsidies for “the investigation, planning and construction of such works”664 providing them with an active role of cooperation with local authorities for the effective provision of these environmental health services.

660 Health Act 1956, s 123A. The Writ of Mandamus is not now used, rather a remedy would be sought under the Judicature Act 1972 (as amended).
661 Now part of the Ministry for Primary Industries (MPI).
662 Replaced with the introduction of the Environmental Protection Authority in the Environmental Protection Authority Act 2011.
663 Health Act 1956, s 27A(1).
664 Health Act 1956, s 27A(1).
5.4.3 Broad Regulation Making Authority of the Governor-General

Independent of the bylaw making powers of local authorities, the Health Act 1956 provides the Governor-General with the power to make regulations under the Act (many of which directly impact on environmental health issues). The regulation making power of the Governor-General is broad, allowing him or her to make, under s 117:665

(1) … such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act, and for all or any of the following purposes:

(a) The improvement, promotion and protection of public health:

Environmental health areas specifically outlined were similar to the bylaw making powers of local government and include the ability to make regulations over cleansing and destruction of unsanitary items,666 prevention of water pollution which may be injurious to health (including but not limited to water supplies),667 food protection668 and a general power to make regulations (by order in council) “over any matter affecting public health in respect of which any local authority is empowered by this or any other Act to make bylaws”.669

This section goes beyond providing a “backstop” measure (allowing central government to act where local government omits to do so). It provides central government with the freedom to regulate in order to fulfil the purpose of the Act. This is subject to consultation being carried out.670 When regulatory powers are exercised to control noxious substances or dangerous goods671 consultation with the Environmental Protection Authority is required.672 If there is inconsistency or repugnance between the regulations and local authority bylaws, the bylaws “shall be deemed to be subject to the regulations”673 which effectively gives central government the ability to regulate on a national level.

665 Health Act 1956.
666 Health Act 1956, s 117(1)(c).
667 Health Act 1956, s 117(1)(v).
668 Health Act 1956, s 117(1)(w).
669 Health Act 1956, s 117(2).
670 Health Act 1956, s 137E.
671 Health Act 1956, s 119.
672 Health Act 1956, s 122(6).
673 Health Act 1956, s 122(4).
5.4.4 Provision of Information or Seeking of Information

Part of providing for health involves providing central government with the necessary information on the state of public health so Parliament can strategise how the Ministry of Health can best carry out its function under the Act. Accordingly a Director of Public Health is appointed with the function of advising the Director-General on public health matters. The Director-General reports to the Ministry of Health (or provides permission for the Director of Public Health to report directly) on the current state of the nation’s health. A Public Health Group is also appointed as a division of the Ministry of Health. The group provides further advice to the Director-General on public health, but also on regulatory matters which aid in improving implementation of environmental health legislation. The Director-General’s role includes the ability to appoint Medical Officers of Health and divide health districts.

5.4.5 Strategy Making Powers (Create Strategies / Create Committees)

Under the NZPHDA, it is the responsibility of the Minister of Health to determine health and disability strategies which will provide the necessary framework to achieve central government’s policy objectives. The New Zealand Health Strategy is the overarching strategy which together with the New Zealand Disability Strategy endeavours to improve “the health of people and communities”. Consultation and reporting on strategies are required under the Act.

In order to carry out this role effectively the Minister establishes ministerial committees to provide research and administrative assistance that will aid the Ministry in strategic planning and policy direction. Of relevance to environmental

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674 Health Act 1956, s 3B.
675 Health Act 1956, s 3B.
676 Health Act 1956, s 3D.
677 Health Act 1956, s 3C.
678 Health Act 1956, s 3E.
679 Health Act 1956, s 3E(3)(b).
680 Health Act 1956, s 7A.
681 Health Act 1956, s 19(1).
682 New Zealand Public Health and Disability Act 2000, s 8.
683 New Zealand Public Health and Disability Act 2000, s 8.
684 New Zealand Public Health and Disability Act 2000, s 8(2).
685 New Zealand Public Health and Disability Act 2000, s 8.
686 New Zealand Public Health and Disability Act 2000, s 8(3).
687 New Zealand Public Health and Disability Act 2000, s 8(4).
688 New Zealand Public Health and Disability Act 2000, s 11.
health, s 13 establishes the National Advisory Committee on Health and Disability that advises the Minister on general matters relating to public health.\textsuperscript{689}

In turn the National Advisory Committee establishes the Public Health Advisory Committee\textsuperscript{690} that provides independent advice to both the National Advisory Committee and the Ministry on matters including:\textsuperscript{691}

(a) public health issues, including factors underlying the health of people and communities:
(b) the promotion of public health:
(c) the monitoring of public health:

A table in the appendices of this thesis, titled \textit{Committees Table – Relevant to Environmental Health} provides further detail on committees. The NZPHDA also establishes and empowers District Health Boards\textsuperscript{692} which will be discussed further in chapter 6, \textit{Environmental Health Functions of Local Government}.

\section*{5.5 MINISTRY FOR THE ENVIRONMENT}

The RMA provides the core functions of the Minister for the Environment and the Minister of Conservation. These functions include the ability to establish National Policy Statements (NPS), National Environmental Standards (NES) and water conservation orders.\textsuperscript{693} These powers to create national instruments and the Minister’s power to delegate to the Environmental Protection Authority are discussed in other parts of this chapter.

The Minister for the Environment is delegated the role of monitoring the “effect and implementation” of the RMA\textsuperscript{694} and of the NPS and water conservation orders.\textsuperscript{695} These core functions go directly towards providing a clear regulatory environmental health framework. Section 24(g) of the RMA further provides for the appropriate devolution of authority and aids intersectional co-ordination by monitoring the “relationship between the functions, powers and duties of central government and local

\textsuperscript{689} New Zealand Public Health and Disability Act 2000, s 13(1)(b).
\textsuperscript{690} New Zealand Public Health and Disability Act 2000, s 14.
\textsuperscript{691} New Zealand Public Health and Disability Act 2000, s 14.
\textsuperscript{692} New Zealand Public Health and Disability Act 2000, s 19 & Part 3 of the Act.
\textsuperscript{693} Resource Management Act 1991, ss 24(a), (b) and (e).
\textsuperscript{694} Resource Management Act 1991, s 24(f).
\textsuperscript{695} Resource Management Act 1991, s 24(f).
government."696 Broader powers include monitoring (at Minister’s discretion) “any matter of environmental significance.”697

5.5.1 Power to Investigate a Local Authorities Performance and the Power to Intervene

Section 24A provides the Minister with the power to investigate a local authority’s performance. This is a broad power allowing the Minister to look at the local authority’s exercise of any of its “functions, powers or duties”.698 The Minister has the discretion to make recommendations to the local authority based on his or her findings.

A local authority’s failure or omission to act will also be investigated and recommendations made under s 24(c) and (d). Where the Minister is satisfied that a failure (on the local authority’s behalf) has occurred, the Minister may either appoint another party to carry out “any of those functions, powers or duties in place of the local authority”699 or, if appropriate, he or she may direct a plan change or variation to address the matter.700

These are very broad powers which the Minister uses with a complete discretion. Interestingly, s 25 does not require an actual failure to take place, only for the Minister to believe that the local authority “is not exercising or performing any of its functions, powers or duties…to the extent that the Minister…considers necessary”.701 This is a much lower threshold than requiring an actual recognised failure to occur and this leaves local authorities vulnerable to Ministerial intervention.

However prior to the Minister being able to appoint a party, the Minister must first give notice (including reasons) to the local authority and provide it with a “reasonable opportunity” to respond on the matter.702 This provides the opportunity for dialogue with the local authority as to why the failure occurred and whether the cause of it is within the local authority’s control. This gives the Minister valuable insight into how local authorities are working, and gives the Minister the opportunity to help address the

696 Resource Management Act 1991, s 24(g).
issue before any decision is made to appoint another party to act. If the Minister does appoint someone, the cost is recoverable from the local authority.\textsuperscript{703}

\subsection*{5.5.2 Power to make Directions}

Section 25A provides opportunity for central government to directly intervene in local authority planning as the Minister can direct both regional councils\textsuperscript{704} and territorial authorities\textsuperscript{705} to prepare a plan and make changes or variations.\textsuperscript{706} These directions should be made to address resource management issues related to their respective functions under the Act. This provides a useful tool for central government to provide national direction without the formality of a national instrument (NES or NPS).

Both the Minister for the Environment and the Minister of Conservation have the discretionary power to direct reviews of regional plans\textsuperscript{707} (in respect to the Minister for the Environment) and regional coastal plans\textsuperscript{708} (in respect to the Minister of Conservation).

\subsection*{5.5.3 Power to Seek Information}

The Minister also has the ability to request information from local authorities under s 27 of the Act. The information may include anything “about the body’s exercise of any of its functions”.\textsuperscript{709} While this is at the Minister’s discretion there are limits on this power as in order to request the information, it must be the type of information that “may reasonably be required by the Minister”\textsuperscript{710} and a reasonable time frame must be set.

\subsection*{5.5.4 Ministerial Power to Allocate Funding}

The Minister also has the power to allocate funding (in the form of grants and loans) under s 26 of the RMA. There is a broad funding criteria allowing the Minister to make

\begin{footnotesize}
\begin{enumerate}
\item Resource Management Act 1991, s 25(4).
\item Resource Management Act 1991, s 25(1)(a).
\item Resource Management Act 1991, s 25(2)(a).
\item Resource Management Act 1991, s 25.
\item Resource Management Act 1991, s 25B(1).
\item Resource Management Act 1991, s 25B(2).
\item Resource Management Act 1991, s 27(3)(a).
\item Resource Management Act 1991, s 27(3)(c).
\end{enumerate}
\end{footnotesize}
grants or loans at his or her discretion “to any person to assist in achieving the purpose of this Act”.

5.6 PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

The Parliamentary Commissioner for the Environment (PCE) was established as an independent statutory body in part one of the Environment Act 1986. It carries out an independent watchdog role with auditory and compliance checking powers. This was the first step in separating policy, implementation, decision making and compliance roles within central government. The commissioner has the ability to appoint employees to assist them with carrying out their “functions, powers and duties” and to use consultants for expert knowledge.

The core functions of the PCE’s role are contained in s 16 of the Act and mainly involve reviewing information and providing advice back to government. These functions revolve around five key aspects. First is the provision of information to the government, by reviewing the “system of agencies and processes established by the Government to manage the allocation, use and preservation of natural and physical resources” and providing feedback.

Secondly is the provision of information to local government by investigating, at the PCE’s discretion, the “effectiveness of environmental planning and environmental management” of local authorities (and providing advice with suggested changes). These two functions allow the PCE to be actively involved in monitoring the behaviour and processes of central and local government, however these powers are limited. While the PCE can provide advice there is no real power to enforce the PCEs recommendation as it is not mandatory for either party to follow the PCE’s advice. The

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713 Independence supported by s 5 (provides that the Parliamentary Commissioner for the Environment cannot hold another officer during his or her term) and s 9(2) (provides salary protection).
715 Environment Act 1986, s 11(1).
717 Environment Act 1986, s 16(1)(a).
718 Environment Act 1986, s 16(1)(b).
PCE is also required to provide annual reports to central government under s 23 of the Act.

The third function is a broad ability to investigate “any matter in respect of which, the Commissioner’s opinion, the environment may be or has been adversely affected”.719 This advice (including recommendations on remedial action) is then provided to the appropriate government authority or body720 with the results reported back to central government. This has resulted in reports from the PCE being prepared on a variety of topics including (but not limited to) the urban environment,721 hazardous waste management,722 Maori participation,723 drinking water,724 sustainable development,725 environment,726 mining727 and resource management.728 Under the fourth main function identified, the PCE is also expected to make submissions on bills, NES or government reforms.729 This has resulted in submissions on various bills related to environmental health.730

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719 Environment Act 1986, s 16(1)(c)(i).
720 Environment Act 1986, s 16(1)(c)(ii)&(iii).
725 Parliamentary Commissioner for the Environment Creating our Future: Sustainable Development for New Zealand (Parliamentary Commissioner for the Environment, Wellington, 2002);
729 Environment Act 1986, s 16(1)(d).
Parliamentary Commissioner for the Environment Submission on the Climate Change Response (Moderated Emissions Trading) Amendment Bill (Parliamentary Commissioner for the Environment, Wellington, 2009);
Parliamentary Commissioner for the Environment Submission on Proposed Changes to the Air Quality NES (Parliamentary Commissioner for the Environment, Wellington, 2010); Parliamentary Commissioner for the Environment Submission to the Local Government and Environment Select Committee: The Environmental Protection Authority
The fifth main function is to collate and disseminate information on the environment and “encourage provision measures and remedial actions” for environmental protection.\(^731\) This is aided by a broad power to collect information.\(^732\)

Accordingly the PCE fulfils an important role by providing independent advice and research on many areas related to environmental health. The role’s strength is its independence and the ability to research in a broad range of areas. However the role’s weakness is having no real power in ensuring its recommendations are followed. A further problem is that the PCE’s budget is relatively small in relation to its functions and aspirations under the Act. For example, for the 2012/2013 term, $2.6 million dollars was provided for the “reports and advice” from the PCE.\(^733\)

### 5.7 ENVIRONMENTAL PROTECTION AUTHORITY (EPA)

#### 5.7.1 The Introduction of an Environmental Protection Authority (EPA)

Environment Minister Dr Nick Smith states that the EPA “is about strengthening New Zealand’s environmental management and efficiently bringing together the regulatory functions”.\(^734\) This can be achieved by separating the technical functions of central government into a “national-level regulatory-focused agency”\(^735\) – the EPA. This will allow the Ministry for the Environment to refocus on its environmental policy-making role and the provision of politically neutral advice on matters of significance to the environment.

This splitting away of the decision making role will allow for greater national direction on environmental regulation, improve clarity of the process and demonstrate independence by removing any “public perception of undue political influence”\(^736\) by Ministers in dealing with matters of national significance. The concentration of
technical skills in a centralised body should enable local government to obtain opinions which are cost and time efficient.

However, the effect of this new approach on the “principle of devolved decision-making” and the role of local government was of primary concern for Local Government New Zealand (LGNZ) in their submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill. LGNZ’s submission provides a useful example of how the principles are relevant to function delegation.\(^{737}\) While Local Government New Zealand (LGNZ) was not opposed to the establishment of an EPA they recommended that caution be exercised in assigning any functions to the EPA to ensure the key principles of environmental governance in New Zealand are maintained. The LGNZ asserted there should be careful consideration before any functions are passed on to the EPA, and that LGNZ should be a key participant in any process where the assignment of additional functions is being considered.\(^{738}\)

LGNZ recommended that any expansion of the EPA’s functions be assessed against various principles.\(^{739}\) First, before any function is transferred, the government must consider if that function is “best performed at the national level under the organisational form of the EPA”\(^{740}\) to avoid usurping the role of the local decision-maker. Secondly, any transferred functions should be regulatory with limited discretion to avoid the removal of policy decisions to a statutory body outside the influence of local democracy. Finally, any delegation must improve effectiveness and efficiency. In considering its suggestions the LGNZ drew attention to the accepted core principles of local government, including the importance of local autonomy, localised solutions to reflect regional diversity and cost sharing to ensure that cost distribution of an initiative

\(^{737}\) Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011”.

\(^{738}\) Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 2.

\(^{739}\) Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 2. The principles stated come from criteria agreed in Cabinet Minute CAB Min (10) 19/9.

\(^{740}\) Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 2.
matched benefit distribution.\textsuperscript{741} These principles mirror the machinery of government principles.

Clause 12(1) of the Environmental Protection Authority Bill stated the EPA’s functions and included:\textsuperscript{742}

\begin{quote}
to carry out any additional function consistent with its objective under section 11
that the Minister directs in accordance with its objective under section 112 of the
\end{quote}

This could potentially allow the EPA to carry out a broad range of functions, however the various functions of the EPA must be compatible and fulfil the objective of contributing “to the efficient, effective and transparent management of New Zealand’s environment and natural and physical resources”.\textsuperscript{743} The wording of cl 11 would suggest consistency with established principles of environmental governance is expected.

The difference in wording between a function being “best performed at national level”\textsuperscript{744} and a function being “of a similar nature and compatible to other functions”\textsuperscript{745} is significant. The first (being the original wording proposed in the cabinet paper and recommended by LGNZ) provides a strict threshold in determining the level of government to which the function should be delegated. Only those functions which are best performed at National level should be considered for delegation (inferring that there would be a preference for delegation to local levels if more appropriate). The latter wording (which is from the Bill) is too broad and vague and if exercised liberally could seriously erode the role of local government (by centralising some of its core functions).\textsuperscript{746}

The risk of centralisation and the erosion of devolved decision-making should be a core concern in delegating functions and LGNZ asserted that a “clear criteria” and

\textsuperscript{741} Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 3.
\textsuperscript{742} Environmental Protection Authority Bill 2010 (246-3), cl 12(1).
\textsuperscript{743} Environmental Protection Authority Bill 2010 (246-3), cl 11(a).
\textsuperscript{744} Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 2. The principles stated come from criteria agreed in Cabinet Minute CAB Min (10) 19/9.
\textsuperscript{745} Environmental Protection Authority Bill 2010 (246-3), cl 11(a).
\textsuperscript{746} Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Protection Authority Bill 2011” at 5.
“transparent process” has yet to be established to protect the core principles of environmental governance adequately.

5.7.2 The Environmental Protection Authority’s Role in Matters of National Significance

Prior to the Environmental Protection Authority Act 2011 (EPA Act), the EPA had been established under s42B of the 2009 resource management reforms747 as an office housed within the Ministry for the Environment. Its role was limited to receiving and processing applications for “proposals of national significance”748 and advising the Minister on these applications.749 Since it was first established there was always the intention to develop its role and functions in the later phases of the resource management reforms so that the EPA would eventually take over a broader role as an independent crown entity.750

Where matters were determined to be of national significance these proposals could be fast tracked to a Board of Inquiry or the Environment Court. This avoided the delays caused by waiting for local authorities to process the applications. Matters could be lodged in two ways, either directly with the EPA who will examine the application and make a recommendation to the Minister or, if the matter is already lodged with a local authority, the Minister has a ‘call-in’ power under s 142 of the Act to call in matters which are (or are in part) of national significance. This may occur either at the Minister’s own initiative751 or at the request of an applicant or local authority.752 Where a matter is directly lodged with the local authority the Minister is restricted in their use of the call-in power and cannot call-in if it is “5 working days” after submissions close on a notified application753 or after the council “gives notice of its decision” on a non-notified application.754

747 Resource Management (Simplifying and Streamlining) Amendment Act 2009.
748 Resource Management Act 1991, pt 6AA.
750 Environmental Protection Authority Act 2011.
752 Resource Management Act 1991, s 142(1)(b).
753 Resource Management Act 1991, s 144(a).
754 Resource Management Act 1991, s 144(b).
Section 142(3) outlines matters to be considered by the Minister in making a determination as to whether a matter is of national significance. Of particular interest to environmental health, the Minister could have regard to whether the matter:-

(a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or

(d) affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment; or

(e) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or

(h) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions.

The addition of (h) in the 2009 resource management reforms signified an important change indicating that “projects that contribute to the wider public good, may be proposals of national significance”. A new s 142(3) was substituted in July 2011 (after the Environmental Protection Authority Act 2011) and while it includes these same matters it allows the Minister to take into account advice from the EPA. This allows the Minister to consider crown policy directions and whether the application could result in a negative impact on the environment.

The Minister can only make a direction after receiving the recommendation of the EPA and the Minister “must have regard to” the EPA’s recommendations. While the EPA makes a recommendation to the Minister this power is limited. Section 147(4)(c) states:

(4) In deciding on making a direction under subsection (1), the Minister must have regard to-

(a) the views of the applicant and local authority; and

(b) the capacity of the local authority to process the matter; and

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756 Added when a new s 142(3) was substituted on 1st October 2009 by s 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
758 A new s 142(3) was substituted on the 1 July 2011 by s 10(1) of the Resource Management Amendment Act 2011.
759 Matters were re-labelled s 142(3)(i), (iv), (v) & (viii) respectively.
This places the EPA’s recommendations into the same category as the views of the applicant and local authority. While it must be considered, following the view of the EPA is not compulsory and the Minister has discretion in how to treat the application.

Where the Minister determines a matter is of national significance the Minister may direct the application to either a Board of Inquiry\(^{765}\) or to the Environment Court\(^{766}\). Whether the application will be granted will depend on whether the application is consistent (with national policy statements, national environmental standards, regional policy statements and regional and district plans) and if granted, whether conditions can be applied to avoid, remedy or mitigate any negative effects of the submission.

When a matter is referred to a Board of Inquiry or the Environmental Court the EPA is responsible for giving notice of the Ministers direction,\(^{767}\) receiving submissions\(^{768}\) and providing information to the decision-making body.\(^{769}\) While the EPA is involved in these administration issues it remains the responsibility of the Minister to appoint the Board of Inquiry.\(^{770}\) Boards of Inquiry range from 3-5 members\(^{771}\) and a chairperson who must be “a current, former, or retired Environment Court Judge or a retired High Court Judge”.\(^{772}\) While the Minister must seek suggestions for appointments from the local authority\(^{773}\) the Minister is not restricted by this\(^{774}\) and may appoint who they consider fit based on their “knowledge, skills and experience” in resource management, the relevant matter, tikanga Maori and the local community.\(^{775}\)

This provides a useful mix of political independence and central government direction. The administration of the process is governed by the EPA as an independent body. While the Minister carries out the appointment process they must consider suggestions from local government. This keeps local government involved in matters that were formally within its jurisdiction. The use of a judge (or former judge) as a chairperson

\(^{765}\) Resource Management Act 1991, s 147(1)(a).
\(^{766}\) Resource Management Act 1991, s 147(1)(b).
\(^{767}\) Resource Management Act 1991, s 149C.
\(^{768}\) Resource Management Act 1991, s 149E.
\(^{769}\) Resource Management Act 1991, s 149G.
\(^{770}\) Resource Management Act 1991, s 149J.
\(^{774}\) Resource Management Act 1991, s 149K(3).
ensures political neutrality while the requirement for the Minister to consider skills, knowledge of tikanga Maori and the local community ensures that decision makers are knowledgeable and are aware of local interests in the application.

While both the Board of Inquiry and Environment Court are independent in their decision-making, both must take into account any advice from the EPA and the Minister’s reasons for making the recommendation. Rights to appeal are limited to questions of law and are subject to ss 300 to 307 of the RMA.

Where the Minister determines the matter is not of national significance, the Minister must direct the matter back to the relevant local authority.

There is no set definition for “matters of national significance” or threshold test used under the RMA. While s 142(3) provides a series of relevant factors the Minister may have regard to in determining the status of the application, the wording of the Act “may have regard” still leaves the decision open to Ministerial discretion and does not provide a fixed checklist. While this is useful in providing flexibility, the process has also been criticised for uncertainty. There is a potential for “inconsistent approaches in the long term” which may be subject to political influence as governments change.

However since the establishment of the EPA the applications of “national significance”, that have been accepted as such, have clearly been on a national scale. The application by the Ruapehu District Council in October 2011 demonstrates the importance of an application being on a ‘national’ scale and beyond the capabilities of local government before central government intervention will occur. In this case the Ruapehu District Council’s request that a proposed mobile phone tower on Whakapapa ski field be a matter of national significance was rejected by both the EPA and the Minister. In rejecting the application the Minister stated that the Ruapehu District Council had an

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776 Resource Management Act 1991, ss 149Q, 149R & 149U.
778 Resource Management Act 1991, ss 147(1)(a) & 147(2).
779 Resource Management Act 1991, ss 147(1)(c) & 147(2).
781 Letter from Sarah Gardner (General Manager of Environmental Protection Authority) regarding Recommendations of the Environmental Protection Authority (7 October 2011).
782 Nick Smith “Ministerial Decision on a request from Ruapehu District Council to call in a matter under s 142 of the Resource Management Act 1991 – Telecom Mobile Limited’s proposed mobile phone facility at the Whakapapa
adequate operative management plan in place which was capable of guiding any decision-making required. While the mountain held national importance, the scale of the application was not sufficient to say it had national impact. Additionally there was a concern that a precedent may be created that “other matters of this scale and nature in the park, any other national park, or any area of significance to iwi will be called in”.\textsuperscript{783}

In contrast, applications that have been accepted as being of national significance and have been referred to the Board of Inquiry have involved the placing of a prison\textsuperscript{784} and the generation of renewable energy,\textsuperscript{785} both of which have an impact on a national scale. In the case of renewable energy this relates to New Zealand’s international obligations under the Kyoto Protocol which is relevant under s142(3).

Concern has been raised in the Queenstown Airport Corporation proposal that the lack of a clear test for matters of national significance could result in some proposals being unfairly captured. Here the Queenstown Airport Corporation had applied for an alteration to the Queenstown Lakes District Plan. This matter was accepted by both the EPA and the Minister as a matter of national importance and was referred to the Environment Court on the advice of the Minister (while the EPA had recommended a Board of Inquiry).\textsuperscript{786} The Minister chose the Environment Court on the basis that the matter could adequately be referred to by the Environment Court and the local authority. While this proposal (like the Ruapehu case) could be argued to affect an area of national significance, but only in a localised manner, the Minister justified the decision on the basis that Queenstown Airport had a “fast growing nature”\textsuperscript{787} and was a significant “strategic transport link regionally and nationally for domestic and international travellers”.\textsuperscript{788} In doing so, the Minister may not have appreciated that this could create a loophole where applicants in “regionally significant areas” attempt to

\textsuperscript{784} Men’s Prison at Wiri proposal.
\textsuperscript{785} Mighty River Power Turitea Wind Farm proposal, Hauauru ma Raki Waikato Wind Farm proposal, Tauhara II application and Unison Wind Farm Te Waka proposal.
\textsuperscript{786} Ministerial Direction of Nick Smith dated 14th February 2011.
\textsuperscript{787} James Gardner-Hopkins \textit{Environmental Protection Agency – Initial Rulings and its Future Role} (Environmental Law and Regulation Forum, 27 April 2011) at 4.
\textsuperscript{788} James Gardner-Hopkins \textit{Environmental Protection Agency – Initial Rulings and its Future Role} (Environmental Law and Regulation Forum, 27 April 2011) at 4.
shortcut their applications as matters of national significance. This issue is crucial to public perception of the process. Where proposals are removed from local authority level, submitters may grow concerned about public participation. An erroneous assumption could be formed (based on the successful trend of previous applications)\textsuperscript{789} that matters of national significance will always be approved (subject to conditions).

This demonstrates the importance of ensuring that the status of “national significance” is clear and justifiable. The use of the EPA as a politically independent body in the regulatory role could encourage the perception of this.

\textbf{5.7.3 The Environmental Protection Authority Act 2011 (EPA Act)}

The EPA established under s42B of the resource management reforms was disestablished under the EPA Act\textsuperscript{790} and replaced by the EPA established under s7 of the EPA Act.\textsuperscript{791} This was intended to ensure the EPA was a fully independent and autonomous crown entity. This is the primary difference between the two EPA’s with all functions, duties, powers, current tasks, plans, staff, assets and funding transferring from the old authority to the new authority.\textsuperscript{792} While the role of EPA continues to evolve, all sections under the Act came into force by the 1st of December 2012.\textsuperscript{793}

The role of the EPA in matters of national significance has been discussed above. Under the EPA Act the EPA’s role has expanded further to include:-

- Managing the emissions trading scheme,\textsuperscript{794} taking over control of climate change regulations and replacing the role of the Chief Executive in regulations under the Climate Change Response Act 2002.\textsuperscript{795}
- Responsibility for the regulation of hazardous substances and new organisms by replacing ERMA as the regulating authority under the Hazardous Substances

\textsuperscript{789} Seven out of eight recent proposals of national significance have been granted approval subject to conditions. The men’s prison at Wiri, NZTA Waterview Connection Plan, Mighty River Power Turitea Wind Farm, Hauauru Ma Rako Waikato Wind Farm, Tauhara II, Te Mihi Geothermal Power Station, Transpowers Upper North Island Grid Project have all been successful applications. Only the Unison Wind Farm Te Waka application (coincidently the one application to the Environment Court and not a Board of Inquiry) was unsuccessful in the basis that Maori interests could not be set aside on the basis of national interest.
\textsuperscript{790} Environmental Protection Authority Act 2011, s 23.
\textsuperscript{791} Environmental Protection Authority Act 2011, s 2.
\textsuperscript{792} Environmental Protection Authority Act 2011, s 24.
\textsuperscript{793} Environmental Protection Authority Act 2011, s 2.
\textsuperscript{794} From the 1st of July 2011.
\textsuperscript{795} Environmental Protection Authority Act 2011, sch 2.
and New Organisms Act 1996 and its various hazardous substances regulations.\footnote{Environmental Protection Authority Act 2011, sch 3.}

- Advising the Minister on the development of national environmental standards.\footnote{Resource Management Act 1991.}


The legislation referred to above belongs to the group of “environmental Acts” listed in s 5 of the EPA Act which are referred to throughout the legislation when describing the EPA’s obligations and the extent of its powers. The EPA Act also amended various pieces of legislation where the role of ERMA was taken over by the EPA.\footnote{Health Act 1956, Food Act 1981 and Health and Safety in Employment Act 1992.}

The qualifications required for appointment to the board of the EPA give a useful indication of the qualities considered relevant to the EPA’s developing functions. While s 10(1) provides a broad requirement that members have knowledge and experience in matters “relevant to the functions of the EPA”,\footnote{Environmental Protection Authority Act 2011, s 10(1).} knowledge considered ‘relevant’ to the role includes knowledge of:

\begin{itemize}
  \item[(a)] governance procedures and organisational change; and
  \item[(b)] New Zealand’s environmental management system; and
  \item[(c)] the links between the economy and environmental management; and
  \item[(d)] the Treaty of Waitangi and tikanga Maori; and
  \item[(e)] administration of environmental risk management frameworks; and
  \item[(f)] central government processes.
\end{itemize}

In contrast, selection of members of ERMA\footnote{Hazardous Substances and New Organisms Act 1996, s 16.} was purely based on the Minister ensuring that “membership includes a balanced mix of knowledge and experience in
matters likely to come before the authority".\textsuperscript{805} It appears that central government is emphasising management frameworks and central government processes suggesting a recognition of the need for national guidance and coordination between parties operating in the area. Already the EPA has expressed an interest in developing “strong working relationships”\textsuperscript{806} with local government through its establishment of working groups when dealing with matters of national significance.\textsuperscript{807}

On announcing the members of the EPA board the Minister for the Environment Nick Smith acknowledged the importance of members having knowledge of the “links between the economy and environmental management”\textsuperscript{808} as this reflected the National Party led government’s “bluegreen approach of supporting growth and protecting the environment”.\textsuperscript{809} The chairman of the EPA board Kerry Prendergast has significant experience in local government\textsuperscript{810} and accordingly has practical experience in coordinating with other levels of government.

The purpose of the Act is broadly described as providing for the establishment of the EPA and providing for “its functions and operation”.\textsuperscript{811} The objective of the EPA\textsuperscript{812} is loosely framed as undertaking its functions to contribute “to the efficient, effective, and transparent management of New Zealand’s environment and natural and physical resources”.\textsuperscript{813} While there is no direct reference to people or providing for their health and well-being as part of managing the environment, s12(2) provides a general requirement for the EPA to undertake its functions in a manner consistent with the objectives of the environmental Acts.\textsuperscript{814} This brings in the purposes of the environmental Acts and accordingly this provides for environmental health under the

\textsuperscript{805} Hazardous Substances and New Organisms Act 1996, s 16(1).
\textsuperscript{806} James Gardner-Hopkins \textit{Environmental Protection Agency – Initial Rulings and its Future Role} (Environmental Law and Regulation Forum, 27 April 2011) at 3.
\textsuperscript{807} Environmental Protection Authority “Working with Councils: Engaging Councils in Processes for Proposals of National Significance” (2011) Environmental Protection Authority <www.epa.govt.nz/about-us/engaging-with-councils>.
\textsuperscript{808} Environmental Protection Authority Act 2011, s 10(2)(c).
\textsuperscript{809} Nick Smith “Environmental Protection Authority Board Announced” Beehive.govt.nz (2 June 2011).
\textsuperscript{810} As former Mayor of Wellington from 2001 to 2010 (and previously as a city councillor).
\textsuperscript{811} Environmental Protection Authority Act 2011, s 3.
\textsuperscript{812} Environmental Protection Authority Act 2011, s 12.
\textsuperscript{813} Environmental Protection Authority Act 2011, s 12(1)(a).
RMA which provides for people’s “social, economic and cultural well-being and for their health and safety”.  

Previously, central government bodies have had a broad power to delegate their functions under the Act to other parties who carry out the role on their behalf. This practice has been severely curbed under the EPA Act. The EPA is restricted in its ability to delegate out its functions under the EPA Act (or other environmental acts) due to a limitation on their ability to contract out. Prior to contracting out their functions (under the EPA or other environmental acts) the EPA must consider:-

(a) Whether the function might be more efficiently carried out by the EPA:
(b) The desirability of keeping institutional knowledge within the EPA:
(c) Whether entering into the contract would limit the EPA’s ability to meet its obligations.

This encourages consideration of whether national direction on an issue would be the most effective tool. It is interesting to see a provision that specifically requires a statutory body to consider this. However given the budgetary constraints placed on the EPA this probably reflects less on government intention to encourage national guidance and more on Treasury’s interest in limiting the EPA’s ability to contract out to private enterprise in an effort to reduce spending and keep the EPA small and cost efficient.

The Minister can in turn delegate any of its powers or functions (under the EPA or other environmental acts) to the EPA while also retaining the ability to exercise the said powers and functions. The EPA can only further delegate the power or function to another party with the “prior written consent of the Minister”. The EPA has delegated the consent hearing function for a marine consent to an independent panel.

A Maori Advisory Committee was established under the Act to provide “advice and assistance…from the Maori perspective”. Further discussion of the Maori Advisory Committee and its role are contained in chapter eight, Environmental Health – Maori Perspective.

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816 Environmental Protection Authority Act 2011, s 14.
817 Environmental Protection Authority Act 2011, s 14.
818 Environmental Protection Authority Act 2011, s 16(4)(a).
819 Environmental Protection Authority Act 2011, s 16(6).
821 Environmental Protection Authority Act 2011, s 19(2).
5.7.4 The Effectiveness of the Environmental Protection Authority

When first proposed, the EPA was seen by many as a turning point in environmental governance and hailed as a “major opportunity to strengthen environmental management” in New Zealand. The role of the EPA in matters of national significance was seen as an introductory step to establishing the EPA as “a central decision maker for a wide range of RMA matters.” In turn the removal of regulatory powers from the Ministry for the Environment would allow it to focus on policy matters. If properly managed (and funded) the EPA had the potential to be the new driving force in environmental health management.

However since its establishment the EPA has been a subject of criticism and disappointment. The Green Party criticised the EPA legislation on the grounds that it provided no clear objectives. While the EPA would provide the perfect opportunity to bridge environmental health functions under both the Health Act 1956 and the RMA, a piecemeal approach has been adopted. The EPA has taken over some public health emphasis (under its role in HSNO), however its role under the RMA is selective and its impact on the Health Act 1956 (which remains the core environmental health legislation in New Zealand) is minimal.

The Environmental Defence Society in their 2009 policy paper recommended that the EPA be “established as an autonomous crown entity”, operate independently of the Minister and “remain a small organisation” of people with “strong scientific and technical skills”. These recommendations were largely followed with an additional focus on management skills and management frameworks in selecting EPA board members.

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822 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at 1.
824 The EPA has been substituted for the ERMA in the Health Act 1956. No additional functions or powers have been awarded.
825 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009).
826 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
827 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
828 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
However the power of the EPA and the significance of its impact have been curbed by its size and funding. Cost saving initiatives have reduced the EPA’s potential influence. Low funding will discourage the EPA from expanding further and if it struggles to fulfil its role properly it is in danger of having its role (and influence) minimised by future governments as a ‘failed reform’.

Unlike other countries where the environmental protection authorities have a set role, here the EPA has an eclectic set of functions. Without administrative purpose under the RMA, the EPA can appear more as a ‘local authority across borders’ rather than a key body of central government.

The powers assigned to the EPA still appear relatively “low impact”. The EPA’s power of referral is limited as the decision making role is still held by an appointed Board of Inquiry or the Environment Court. While the EPA has some decision-making powers under HSNO (and will assume consent authority roles under other legislation), the specialised nature of these roles again limits the scope of the EPA from having a broad impact.

Had the EPA been properly funded and empowered, it could address many of the key issues in environmental health management. With an increased concentration of technical skills the EPA could be fundamental in drafting National Environmental Standards (rather than being relegated to an advisory role) and providing local government with technical support and “environmental planning guidance and training”.

More importantly the EPA could have addressed planning quality and consistency issues by developing “a toolbox of standardised regional and district plan templates and provisions”. However this role has now been taken over by the Ministry for the Environment (which is also very capable as an authority on environmental policy).

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830 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
831 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
832 Raewyn Peart Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.
While it is arguable the EPA would develop into this role (or another body could be introduced), it seems the EPA was the perfect vehicle for such a role and the government has missed the opportunity. The EPA has been given an expanded role under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which comes into force in June 2013. This Act provides the EPA with significant roles in preparing regulations and administering the Act and acting as a consent authority for marine consents. In performing the marine consent function, the EPA has delegated the decision-making to an independent consent panel.

5.8 DEPARTMENT OF CONSERVATION (DoC)

The Department of Conservation (DoC) was established under the Conservation Act 1986. DoC is a statutory body with functions explicitly stated in statute. DoC reports to the Minister of Conservation and “must carry out all the Minister’s lawful directives”. While the interests of DoC are on the periphery of environmental health, it carries out an important role under the Resource Management Act 1991 by preparing the New Zealand Coastal Policy Statement and carrying out coastal management.

5.9 CENTRAL GOVERNMENTS ROLE IN NATIONAL PLANNING

Local government may take the main role in regulation of environmental health but it is the national legislature and central government that set down the legislative framework and provide policy direction and guidance. Central government addresses environmental health concerns by focusing on nationwide goal achievement and providing “national leadership and coordination on key issues”.

The key role of central government can be broken into separate tools used to maintain, improve and promote environmental health which is discussed below. Central government sets the direction for the nationwide response to environmental health

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834 After the date of the thesis.
836 Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 13(1)(a). The consent authority is chaired by a retired Environment Court judge.
839 Resource Management Act 1991, ss 56 to 58A.
issues. It carries out research to monitor the national state of public health and the state of the environment. This allows it to set environmental health goals (often related to international obligations or standards) and in response it establishes key goals and policy direction. This leads to the setting of national targets for health and environment and strategic planning of how these goals can best be achieved (including whether implementation would be best at central or local government level). National politics and international obligations each play a part in determining the importance of many environmental health matters and the urgency of response. These matters are delegated to set ministries within central government who are responsible for coordinating and providing the national strategy.

The Ministry of Health is responsible for establishing national health policy, developing and monitoring legislation which promotes and protects health, and providing sector development towards environmental health goals. This role is complemented by the Ministry for the Environment’s role in developing and monitoring environmental legislation, setting national environmental policy and providing guidance through setting standards reflecting a “national perspective”, and using tools such as National Policy Statements and National Environmental Standards.

Both Ministries (together with other central government ministries such as the Ministry of Primary Industries, Ministry of Economic Development, Treasury, Department of Building and Housing and Ministry of Social Development) work “collaboratively in a “whole-of-government” approach on issues which impact on public health outcomes”. An important goal is co-ordinated national leadership with integrated relations between different parties at central and local government level so that combined government initiatives can be developed.

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844 Resource Management Act, s 45.
845 Resource Management Act, s 43.
Under the Health Act 1956 and the New Zealand Public Health and Disability Act 2000, national planning involves the setting of health targets, the creation of a national New Zealand Health Strategy and the setting of Environmental Health Indicators. These indicators are perhaps the most important aspect of central government planning for environmental health. They were developed by the Ministry of Health with the intention of developing a national environmental health information system. This was intended to result in a national environmental health action plan at central government level which would co-ordinate environmental health responses nationally and reduce regional variation.847

The strategic and operational planning at local level allows environmental health goals to be incorporated into policies and plans for implementation. Strategies build upon each other to ensure consistency and alignment between old and new initiatives. This aspect of planning is a crucial part of the central government’s role.

5.9.1 New Zealand Health Strategy and its Implementation Framework

Once the New Zealand Health Strategy was developed, a framework for implementation of the strategy followed. The framework for public health action (based on the strategy) provided a structure for an integrated public health approach.848

Following extensive research in the 1990s and submissions from various parties, key priorities for government were identified together with a series of “health targets” that were aimed at improving the health of all New Zealanders and reducing inequalities in the provision of health services. Once common goals for improving health were established, the New Zealand Health Strategy provided the vehicle for central government to set “the platform for the Government’s action on Health”.849 The need for an integrated “whole-of-government” approach was introduced with a development goal of strengthening “intersectoral links” and providing specific strategies and tools to aid in goal achievement. While other strategies such as the New Zealand Disability Strategy, New Zealand Primary Health Care Strategy and the New Zealand Health

Knowledge Strategy were developed during this time, it is the New Zealand Health Strategy that recognises health effects of the physical environment and the need to regulate environmental health.

The strategy identified seven fundamental principles and provided that new strategies or developments should relate to these core principles. This strategy also highlighted key goals and objectives for adoption by the Ministry of Health and District Health Boards. While most of these objectives relate to provision of health services or health factors related to social factors (like smoking, diet or oral care), environmental health was also considered when looking at the link between a person’s physical environment and their health.

A causal connection approach was adapted with key determinants of health being identified so that negative influences on health could be reduced and positive influences enhanced in an effort to create “supportive environments for health”. In structuring goals and objectives for set areas of health, environmental health practices were used with people’s physical environments being assessed to measure the “potential for effecting health improvement within this environment”.

The “Goals and Objectives Framework” that resulted determined that a “healthy physical environment” was important to achieve the overall goal of improving health. Environmental health objectives identified to achieve this goal included the following.

14. Support policies and develop strategies and services that ensure affordable, secure and safe housing.
17. Support policies and develop strategies and services that ensure all people have access to safe water supplies and effective sanitation services.
18. Reduce the adverse health effects of environmental hazards.

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In 2003 following the introduction of the New Zealand Health Strategy, “Achieving Health for All People – Whakatutuki Te Oranga Hauora Mo Nga Tangata”\(^{855}\) was introduced by the Public Health Sector. It provided a framework for a public health approach aimed at achieving the goals of the Strategy. A key aspect of this public health approach was recognizing the integrated relationships between the Ministry of Health, District Health Boards, Primary Health Organisations, local government, other central government, environmental agencies and the community in aiming to achieve improved health. In tackling the situation it was recognised that an interdisciplinary approach must be used with “a strong economy, adequate education, good quality housing and full employment”\(^{856}\) being identified as important characteristics of a healthy community.

Rather than replacing the strategy, the framework designed in “Achieving Health for All People” is read in conjunction with the strategy to explain “how” the goals of good health can be achieved once they are identified.\(^{857}\) The Ministry of Health has stressed that planners need to ensure that environmental health issues, as “basic foundations of public health action”\(^{858}\) are maintained with provision of safe drinking water being tagged “high priority”. Of the five core objectives established in the approach, objective three - “Build Healthy Communities and Healthy Environments” - was directly linked to environmental health.\(^{859}\)

Objective three recognises that these factors “underpin public health action”.\(^{860}\) The framework places emphasis on the importance of central government providing national policy and regulation but insists that a balance should be reached with “local action based on local priorities”.\(^{861}\)

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Examples given in the framework include the importance of national regulation and consistency on matters such as safe drinking water and waste management to ensure a uniform approach (while conceding that local variation may be required for success). Interestingly these two areas have since been legislated on by central government following the development of the framework with the Health (Drinking Water) Amendment Act 2007 and Drinking Water Standards for New Zealand 2005 (revised 2008) together with the Waste Minimisation Act 2008 providing national guidance on these areas.

Each objective is broken down according to the various parties involved in the “whole-of-government” approach. Under each party key actions (related to the various strategies) are listed with examples of potential outputs. The framework recognises the Ministry of Health as being responsible for “national health policy, regulation and sector development” as discussed previously. Further key actions expected of the Ministry of Health include the following:

- Influence community and environmental policy across different government sectors.
- Develop an environmental health plan for New Zealand.
- Develop, maintain, administer and enforce environmental health legislation and activities and provide national leadership and co-ordination on key issues.
- Establish and promote links and interagency agreements with other sectors which influence environmental health risk factors and health status.

Potential outputs to fulfil these key actions are also suggested in the framework. Outputs expected from the Ministry of Health are similar in some respects to its responsibilities under legislation – to plan and implement strategies to improve health, to gather information on the promotion of public health and to continue to strategise and update planning. Other examples specific to the framework include the suggestion that the Ministry establish an Environmental Health Plan for New Zealand and

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862 The provisions of the Health (Drinking Water) Amendment Act 2007 were incorporated in 2008 into a new Part 2A of the Health Act 1956 under s 7 of the Amendment Act.
implement it, plan for funding the monitoring of environmental health and create specialised projects to improve environmental health management in the areas of “drinking water, sewage treatment, organochlorines and the control of exotic mosquitoes”.

The role of other divisions of central government such as the Ministry for the Environment are grouped together as “other government national policy-making agencies” that are not directly involved in the health sector. Again, their key actions reinforce central government’s role in working collectively on a “whole-of-government” approach and developing integrated relations between central government, local government and other relevant bodies.

5.9.2 Analysis of the New Zealand Health Strategy and Resulting Public Health Framework

The extent to which the New Zealand Health Strategy and the resulting framework have improved environmental health, or have altered central government’s approach to environmental health, remains undetermined. This is partially due to the massive scale of the project. The co-ordination of all the various parties involved in the environmental health sector is a major achievement in itself, however the implementation of the framework will take time as new procedures are tested and introduced. Changes in government since 2003 have also resulted in a change in priorities or a change in policy direction for central government as they redefine what the key objectives of improving health should be.

The strategy and framework reinforces central government’s role in producing and implementing environmental health based legislation. The achievement of this key action is also limited with pockets of development. There is no legislation which specifically defines environmental health or identifies environmental health as an

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individual area requiring regulation. The Health Bill which aims in part to clarify environmental functions is still awaiting its second reading following the report of the Health Committee being presented on the 26th of June 2008. However legislation focussing on aspects of environmental health has been introduced since the framework.

An example of this is the Waste Minimisation Act 2008 which was established following the 2003 suggestion in the “Achieving Health for All People” framework that waste management required a uniform approach (best achieved by statute).

The Waste Minimisation Act 2008 has been introduced with the purpose of encouraging waste minimisation in an effort to protect the environment and provide “environmental, social, economic and cultural benefits”. While the Act mainly imposes environmental health functions on local government (such as the obligation to adopt a waste management and minimisation plan) it also provides an active role for central government in making recommendations on plans. This power is only useable where the proposed plan is inadequate or where changes will assist achievement of waste minimisation goals. Local government review of their own plans involves a waste assessment which considers if proposals adequately protect public health.

The level of information required for the assessment will be what the territorial authority “considers appropriate” when considering “the possibility that the territorial authority may be directed under the Health Act 1956 to provide the services referred to in that Act”. This assessment also involves the territorial authority consulting the Medical Officer of Health (who is designated by the Ministry of Health). This Medical Officer of Health also has the power to “serve notice” on territorial authorities for causing nuisance. Local government is delegated the ability to make bylaws.

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871 Waste Minimisation Act 2008, s 3.
875 Waste Minimisation Act 2008, s 55.
876 Waste Minimisation Act 2008, s 56.
which will bind the Crown unless the Minister for the Environment gives notice and exempts the Crown as a matter of national interest.

The most promising (and presumably the most ambitious) key action stated in the framework was the development and implementation of an environmental health plan for New Zealand. The co-ordination of all environmental functions into the one central plan would be a major development in environmental health management. While the current system is piecemeal and fractured between varying pieces of legislation and varying levels of government, the development of a national plan could ensure that a clear framework is established. The idea of a national environmental health plan had been in development prior to the creation of the framework. Environmental health indicators were developed as the first step in creating a national action plan.

The introduction of environmental health indicators in 2001 was based on there being a lack of environmental health specific data to aid in strategic planning. While there were statistics on environmental affects and statistics on health, these were rarely linked together when commonalities in both showed the intrinsic link between health and the environment. The production of a set of environmental health data looking at specific areas such as water quality and air quality would provide the basic information that could then be used for planning a larger environmental health plan.

The creation of a national environmental health plan (as discussed in the New Zealand Health Strategy) was further recommended in the OECD’s “Environmental Performance Review of New Zealand” in September 2006. Following the New Zealand Health Strategy, the Institute of Environmental Services and Research stated the development of a national environmental health plan to be one of their core activities in “health and environment public policy”. However while some preliminary work, such as literature reviews and analysis, was started, no environmental health action plan has been developed. In 2009 the Ministry of Health confirmed “that this project was not completed because of changes in priorities and funding within the

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879 Waste Minimization Act 2008, s 57(1).
880 Waste Minimization Act 2008, s 57(2).
Information developed during this project was “incorporated in the Ministry of Health’s environmental and border health protection strategic and business planning” and used to inform the Ministry of Health’s relationship with District Health Boards who administer various environmental health functions on behalf of central government.

5.10 SUMMARY

The environmental health functions of central government are focussed on gathering environmental health information and using this information to create policies and national instruments to provide guidance to local government and their communities. Further analysis of the functions of both central and local government (including the relationship between both levels of government) is provided in chapter 7 of this thesis.

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883 Email from Sally Gilbert (Manager of Environmental & Border Health, Population Health Protection Group, Population Health Directorate at the Ministry of Health) to Stephanie Mead regarding the proposed New Zealand Environmental Health Action Plan (3 November 2009).
884 Email from Sally Gilbert (Manager of Environmental & Border Health, Population Health Protection Group, Population Health Directorate at the Ministry of Health) to Stephanie Mead regarding the proposed New Zealand Environmental Health Action Plan (3 November 2009).
This chapter outlines the core environmental health functions of local government. District health boards, regional authorities (regional councils) and territorial authorities (district and city councils) provide the three main bodies at local government level responsible for environmental health management in New Zealand. The Local Government Act 2002 (LGA) defines the terms local authority (meaning a regional council or territorial authority) and territorial authority (meaning a city or district council). Accordingly environmental health functions can be allocated to territorial authorities, regional authorities or to both under the term local authority depending on the statute. The flowchart, titled Central Government and Local Government Environmental Health flowchart, on the first page of the appendices of this thesis has been produced to provide a visual indicator of these parties.

6.1 LOCAL AUTHORITIES

The Local Government Act 2002 (LGA) defines the purpose of local government and sets out the framework for local authorities and their functions and powers.

The purpose of local government is to provide a forum for democratic local community decision making and to “promote the social, economic, environmental, and cultural well-being of communities”. In performing its role under the Act a local authority is
to have regard to its “core services”. Core services related to environmental health include “network infrastructure”\textsuperscript{890}, “solid waste collection and disposal”\textsuperscript{891} and “the avoidance or mitigation of natural hazards”.\textsuperscript{892}

The LGA also provides the basic principles relating to local authorities.\textsuperscript{893} Those of interest include a requirement that local authorities operate in a transparent and “democratically accountable manner”,\textsuperscript{894} taking local communities needs and opinions into account in decision making.\textsuperscript{895} Local authorities are required to collaborate with other local authorities where appropriate,\textsuperscript{896} and take a “sustainable development approach”\textsuperscript{897} while considering community well-being. These principles apply to local authorities when carrying out functions under the LGA or under other statutes.

In regards to environmental health, further functions are bestowed on local authorities under the RMA. In the RMA, local authorities are divided into regional councils and territorial authorities (city and district councils) and each adopt different functions under the Act. Regional councils are required to focus on the “establishment, implementation, and review of objectives, policies, and methods”\textsuperscript{898} aimed at managing natural and physical resources, soil conservation,\textsuperscript{899} water quality,\textsuperscript{900} coastal water management,\textsuperscript{901} natural hazards,\textsuperscript{902} hazardous substances, contaminated land, water supply, and “discharges of contaminants into or onto land, air, or water”\textsuperscript{903}.

Territorial authorities have a very similar provision. They are also required to focus on the “establishment, implementation and review of objectives, policies and methods” aiming at managing natural and physical resources, natural hazards and hazardous substances.\textsuperscript{904} In contrast, a territorial authority’s obligations in regards to contaminated land, differs from a regional councils. The former focus is on preventing

\textsuperscript{890} Local Government Act 2002, s 11A(a).
\textsuperscript{891} Local Government Act 2002, s 11A(c).
\textsuperscript{892} Local Government Act 2002, s 11A(d).
\textsuperscript{893} Local Government Act 2002, ss 14 and 39.
\textsuperscript{894} Local Government Act 2002, s 14(1)(a)(i).
\textsuperscript{895} Local Government Act 2002, s 14(1)(b)&(c).
\textsuperscript{896} Local Government Act 2002, s 14(1)(e).
\textsuperscript{897} Local Government Act 2002, s 14(i)(b).
\textsuperscript{898} Resource Management Act 1991, s 30(1).
\textsuperscript{899} Resource Management Act 1991, s 30(c)(i).
\textsuperscript{900} Resource Management Act 1991, s 30(c)(ii).
\textsuperscript{901} Resource Management Act 1991, s 30(c)(iii).
\textsuperscript{902} Resource Management Act 1991, s 30(c)(iv).
\textsuperscript{903} Resource Management Act 1991, s 30(1) ss (c),(ca),(e) and (f).
\textsuperscript{904} Resource Management Act 1991, s 31(a).
or mitigating adverse effects from developing the land, whereas regional authorities are concerned with identifying contaminated land and monitoring it. Similarly the interest in water is based on controlling activities on the water surface (rather than the water quality focus of regional councils). Additional focuses for territorial authorities include controlling noise emissions and land subdivision.

This provides a useful demonstration of the key differences between regional councils and territorial authorities. While they are both termed local authorities and are both responsible for the implementation of environmental health legislation, regional councils are focused on air, water, soil and biodiversity with a catchment based interest. In contrast territorial authorities are focusing more on the environmental impacts of human activities and land use with a community based interest. This leads to them holding separate, yet complementary roles in environmental health. However this also means that coordination between parties, and a clear framework, is important as both parties are required to contribute to the management of the same resources. Coordination may be facilitated by the establishment of a combined unitary council, as found under the Auckland Council (2012).

The Health Act 1956 contains the primary environmental health functions for local authorities. A local authority has a duty to “improve, promote, and protect public health within its district”. In achieving this local authorities have several key functions directly related to environmental health management:-

- A local authority must appoint environmental health officers (or other statutory officers if necessary);
- A local authority must inspect its districts for nuisances or “conditions likely to be injurious to health or offensive” (and address these if located);
- A local authority make bylaws for “the protection of public health”;

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909 Health Act 1956, s 23.
910 Health Act 1956, s 23(a).
911 Health Act 1956, s 23(b).
912 Health Act 1956, s 23(e).
A local authority must report back to a medical officer of health on “diseases, drinking water, and sanitary conditions within its district” as required.

These various functions will be discussed throughout the rest of this chapter.

6.1.1 Appointment of Environmental Health Officers (EHOs)

It is a mandatory requirement that each local authority appoint at least one EHO for its district. The Minister of Health may also direct a local authority to appoint further EHOs or to enter agreements with other local authorities to appoint a joint EHO to carry out tasks over both jurisdictions. Where a local authority fails to appoint an EHO the Director-General can appoint a health protection officer to carry out the EHO role. This is interesting considering that health protection officers do not have the same education or qualification requirements as EHOs and accordingly may not have the same training and expertise. EHOs investigate environmental health problems and carry out a monitoring role for the local authority. They may also be required to assess premises which are regulated by the local authority (such as food outlets).

One of the problems for EHOs is the fractured nature of their functions which requires continual input from other parties to deal with an environmental health matter. EHOs are required to coordinate with other parties at different levels of government in order to carry out basic environmental health management. For example, while an EHO would be able to address smoke if it was causing a nuisance (i.e. offensive or injurious to health), air quality is a regional council responsibility and is the subject of a national environmental standard. EHOs are responsible for assessing food premises but this responsibility is shared with the Ministry of Primary Industries (who have absorbed the New Zealand Food Safety Authority) and public health units and private assessors. In regards to housing standards, EHOs have the ability to issue cleansing orders, or to determine that a house is not fit for living in, but the Department of Building and Housing and building inspector are responsible for housing standards. Essentially this

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913 Health Act 1956, s 23(f).
914 Health Act 1956, s 28(1).
915 Health Act 1956, s 23(2).
916 Health Act 1956, s 23(6).
means that to deal with many relatively simple environmental health matters, several parties at local and central government level must be involved.

6.1.2 Nuisances

A key environmental health function of an EHO’s role is the power to identify and abate nuisances under the Health Act 1956. Section 30(1) provides that “every person by whose act, default, or sufferance a nuisance arises or continues…commits an offence against this Act”. Section 29 defines various nuisances and gives a variety of examples, which include (but are not limited to), waterways or drains that are poorly maintained, overcrowded or unsanitary buildings, noise\footnote{Murray v Laus [1960] NZLR 126 (SC) (case provided that a vineyard bird scattergun could be deemed offensive under the provision).} or vibration emissions “likely to be injurious to health”,\footnote{Health Act 1956, s 29(ka).} emissions of smoke and unsanitary water supplies. In order for a nuisance to be declared, the majority of these situations require a basic threshold test that it must be “offensive or likely to be injurious to health” in order to constitute a nuisance.\footnote{Health Act 1956, s 29.}

This threshold means that some situations, while not ideal from a council or environmental health viewpoint, will not be defined as nuisances and accordingly cannot be abated using these provisions. For example a pile of rubble or rubbish that is visually displeasing (but contains no health threat such as vermin\footnote{Health Act 1956, s 29(c).} or the risk of disease from mosquitoes or flies\footnote{Health Act 1956, s 29(q).}) cannot be declared offensive and accordingly is not a nuisance.\footnote{Coventry City Council v Cartwright [1975] 1 WLR 845 (QB) and Ball v Auckland City Council (1985) 3 DCR 593 (DC).}

There are several key issues with the current definition of nuisance as prescribed in the statute. The threshold test (from 1956) has been argued to be an archaic provision which needs amending to reflect changes in environmental health legislation.\footnote{Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.} For example, issues such as workplace safety, and clean and healthy working environments (potential nuisances under ss 29(g)(h) and (i)) are now covered in modern provisions by Occupational Health and Safety and the Department of Labour under the Health and
Safety in Employment Act 1992. Similarly the idea of using this nuisance provision to protect public health may overlap with more contemporary environmental protection and regulation.

For example, s 15 of the RMA prohibits people from discharging “contaminants or water” into water, land or air without the discharge being “expressly allowed by a national environmental standard or other regulations, a rule…plan…or a resource consent”\(^{924}\). Section 17 further provides that “every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity…whether or not that activity is carried out in accordance with” a rule, national environmental standard or consent.\(^{925}\) It is unlikely that a nuisance (under s 29 of the Health Act) could be established without s 17 of the RMA also being breached. Accordingly the potential use of more modern and appropriate provisions under the RMA, may render the nuisance provisions superfluous to requirements.\(^{926}\)

The current nuisance provisions (in the 1956 Act) do not reflect the changes in ideologies about environmental health and health and well-being and instead focus on definitions more suitable for how disease is spread, (from a 1950s perspective) than on how ill health is caused and how it may be improved in the absence of these nuisances.\(^{927}\)

Nonetheless the nuisance provision does provide a useful tool for EHOs and if it is appropriately updated it could continue to be an effective tool in environmental health management. Abandoning the use of the nuisance provision due to “legislative competition”\(^{928}\) from environmental laws would not ensure that the human health focus is maintained. EHOs have a long tradition of being involved with their local communities and local authorities are in direct contact with communities on a daily basis. These values should not be lost when the provision can be easily updated.

\(^{925}\) Resource Management Act 1991, s 17(1)(a)&(b).
\(^{926}\) Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
\(^{927}\) Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
\(^{928}\) Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8 at 12.
The nuisance provisions, together with the direct duty on local authorities to inspect their districts regularly “for the purpose of ascertaining if any nuisance, or any conditions likely to be injurious to health or offensive, exist”\(^{929}\) mean councils are in the best position to actively identify these issues and address them before a complainant comes forth or damage is caused.

**Public Health Bill 2007**

The Public Health Bill 2007 has attempted to update some of the archaic provisions of the Health Act 1956 and provides an amended definition for nuisances. The first draft of the bill defined the “nature of a nuisance” in cl 166 as “an activity or state of affairs that is, or is likely to be injurious to public health.”\(^{930}\) The clause then goes on to provide further detail in sub-cls (2) and (3) that are of a more general nature than the original provision (i.e. it provides for nuisances arising from “buildings or structures, land, air, water, refuse, noise, emissions, discharge”\(^{931}\) without describing specific situations in detail, as the current Health Act does).

This simplification of wording is in keeping with modern legislative drafting. However, while this proposed amendment is similar to the original provision there are two important differences that can fundamentally change the whole meaning of nuisance, and the ability of an EHO to act underneath the nuisance provision.

The first difference is that the new clause omits the term “offensive” meaning the situation must be “likely to be injurious” to constitute a nuisance. This is a higher threshold than before meaning that some situations, that may have been nuisances under the previous legislation, will not satisfy the replacement provision. The most obvious example of this is controlling odours. Previously foul odours from sewage or cooking offal could be termed “offensive” under the Act. Under the new provision, unless the unpleasant odour can be termed as “injurious to health” (which is unlikely in the example given above) it would not invoke the nuisance provision leaving a complainant without redress.\(^{932}\) This further weakens the opportunity for EHOs to invoke this clause and instead forces local authorities to concentrate on remedies under the RMA, missing

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\(^{929}\) Health Act 1956, s 23(b).
\(^{930}\) Public Health Bill 2007 (177-2), cl 166(1).
\(^{931}\) Public Health Bill 2007 (177-2), cl 166(3) & (4).
out on the opportunity to use the more specifically tailored power which, with careful amendment, could be a more useful tool for directly addressing environmental health issues.

The second difference is that the new clause mentions the situation being “injurious to public health” as opposed to “injurious to health”. The insertion of the word public can again have a big impact. The term “public health” under the Act is defined as:-

…the health of all of-

(a) the people of New Zealand; or

(b) a community or section of those people.

Previously the term “health” could refer to the health of the individual and / or the health of a community. Accordingly the use of “public health” in the new legislation implies that in order for a situation to be a nuisance it is not enough that it affects an individual, and instead it must affect a community or a section of the community in order to invoke the nuisance provision. This would leave an individual complainant without redress unless it could be proven that group of people is affected. This may be an intentional act by Parliament to limit the scope of nuisance, or it may simply be an oversight in drafting which has led to this unusual situation.

For example the insertion of the term “public” may be part of modernising the language of the Act so that it is in keeping with more modern legislation such as the New Zealand Public Health and Disability Act 2000 and references “public health”. This is a reasonable assumption given the name of the Act is also being amended from the “Health Act” to the “Public Health Act”.

EHOs from several different local authorities raised these issues, and were critical of the changes in their submission on the Public Health Bill and how it could affect them.

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932 Ian Milnes, Environmental Health Officer, Manukau “Submission to the Health Select Committee on the Public Health Bill 2007”.
933 This same definition of “public health” is used in the Public Health Act 1956, s 2(1), the New Zealand Public Health and Disability Act s6(1) and Public Health Bill 2007 (177-2), cl 4.
934 Ian Milnes, Environmental Health Officer, Manukau “Submission to the Health Select Committee on the Public Health Bill 2007”. Julie Anne Lloyd, Environmental Health Officer, Warkworth “Submission to the Health Select Committee on the Public Health Bill 2007”. Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007”.
935 Public Health Bill 2007 (177-2), cl 1.
in carrying out their functions.936 In reporting back on the Public Health Bill, the Health Select Committee recommended that the term “offensive” be reinserted into the definition of nuisance but that it be further qualified so that “an activity or state of affairs would not be offensive unless reasonable persons in the area would regard it as unacceptable”.937 This is a reasonable amendment which would allow an EHO to address issues such as odours from open sewage but avoid them spending time on frivolous or vexatious complaints. The committee also recommended the deletion of “public” and the use of the term “health” instead.938

The committee’s amendments would address many of the concerns caused by Parliament’s proposed bill. Unfortunately any progress on the Public Health Bill has been slow and the bill is still awaiting its second reading (following its report back from the Health Select Committee in June 2008). Since 2008 substantial changes have occurred in local government and resource management reform making it questionable whether the Bill, in its current 2008 state, would be progressed further without substantial review.

In regards to abating a recognised nuisance a local authority has two options. First, the local authority can apply to a District Court for an order against the owner or occupier of the land to abate the nuisance,939 and to prohibit the use of the building if “unfit for human occupation”940 until works are carried out. If the order is ignored the local authority can complete the necessary work and recover the costs.941 Secondly, if immediate action is necessary to abate a nuisance, an engineer or environmental health officer may enter the property without notice and abate the nuisance.942 This is a broad power operated at the discretion of an EHO or engineer of the local authority who, in their opinion, deems the work necessary. This may also enable the EHO to “invoke the

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936 Ian Milnes, Environmental Health Officer, Manukau “Submission to the Health Select Committee on the Public Health Bill 2007”. Julie Anne Lloyd, Environmental Health Officer, Warkworth “Submission to the Health Select Committee on the Public Health Bill 2007”. Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007”.
937 Commentary of the Health Select Committee on the Public Health Bill 2007 (177-2) at 7.
938 Public Health Bill 2007 (177-2), cl 166(1)(a).
939 Health Act 1956, s 33(2).
940 Health Act 1956, s 33(3).
941 Health Act 1956, s 33(6).
942 Health Act 1956, s 34(1).
building code powers…enab[ling] a notice to be issued to carry out remedial work, including demolition”.  

6.1.3 Other statutory authorised officers

There are three main types of “officers” who work in environmental health management in New Zealand. There are key differences between the different officers and their functions. While environmental health officers are appointed by local authorities, medical officers of health and health protection officers are appointed by the Director-General of Health and accordingly they provide central regulatory direction. These other statutory officers operate through public health units. Public health units are owned by the district health board and traditionally focus on regulation in “environmental health, communicable disease control, tobacco control and health promotion programmes”. Further officers may be appointed to carry out tasks under specific statutes, including (but not limited to) litter control officers, building inspectors, waste management inspectors and bio-security inspectors.

Both EHOs and medical officers of health are required to have professional qualifications. EHOs must have a qualification as prescribed by the Environmental Health Officers Qualifications Regulations 1993, whereas medical officers of health are required under the Health Act to be medical practitioners who are “suitably qualified and experienced in public health medicine”. There are clear sections which expressly state the functions and powers of both officers, and their involvement in environmental health.

In contrast, there are no official qualification requirements for health protection officers, only the provision that the Director-General may appoint them based on his or her discretion and that “functions, duties and powers” will be assigned to them at the time of their designation. This issue has not been addressed in the Public Health Bill.

944 Health Act 1956, s 7A.
947 In accordance with the Health Practitioners Competence Assurance Act 2003.
948 Health Act 1956, s 7A.
949 Health Act 1956, s 7A(5).
either, and creates a “clear disparity and inequality”\textsuperscript{950} between EHOs and health protection officers, potentially leading to confusion and “overlap of roles and responsibilities”\textsuperscript{951} The divisions between each role must be clearly defined to avoid duplication and additional costs. For example, in cl 329 of the Public Health Bill, medical officers of health, health protection officers and EHOs are all given the power to issue compliance orders which require a person to “stop, or prohibit that person from starting”\textsuperscript{952} an action which on the officer’s discretion (and on reasonable grounds) is “likely to contravene, any specified provision”\textsuperscript{953} or “will or may create a significant risk to public health”.\textsuperscript{954} On face value this appears to be recognising DHB and territorial authority interest in the area and allowing each to respond accordingly. However the clause creates a situation where DHBs can be enforcing compliance orders in areas where territorial authorities are in control as the consent authority.\textsuperscript{955} Rather than facilitate cooperation, this leads to a jurisdictional conflict between the parties, resulting in calls by territorial authorities for “EHOs to be the enforcing authority for consents issued by the territorial authority and HPOs the enforcing authority where the DHB or [Director-General] was the consenting authority”.\textsuperscript{956}

Both EHOs and medical officers of health have called for greater clarification on health protection officer’s roles. This is important as all three parties are often required to work together under various acts\textsuperscript{957} and regulations.\textsuperscript{958} The lack of clear roles and responsibilities for health protection officers is of particular concern considering that in several parts of the Act, the Health Act provides for health protection officers to carry out the same tasks as EHOs or provide EHOs with direction (together with the medical officer of health).

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\hspace*{1cm} Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007” at 3.
\hspace*{1cm} Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007” at 3.
\hspace*{1cm} Public Health Bill 2007 (177-2), cl 329(1)(a).
\hspace*{1cm} Public Health Bill 2007 (177-2), cl 329(1)(a)(i).
\hspace*{1cm} Public Health Bill 2007 (177-2), cl 329(1)(a)(ii).
\hspace*{1cm} Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007” at 11.
\hspace*{1cm} Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007” at 11.
\hspace*{1cm} These include the Health Act 1956, Waste Minimisation Act 2008, Tuberculosis Act 1948, Burial and Cremation Act 1964 and Food Act 1981.
\hspace*{1cm} These include the Health (Infectious and Notifiable Diseases) Regulations 1966, Cremation Regulations 1973 and Food (Safety) Regulations 2002.
\end{flushleft}
For example, under s 28(6), the Director-General can appoint a health protection officer to “carry out the duties of an environmental health officer”, if a local authority has failed to appoint an EHO. The appropriateness of appointing a health protection officer to this position (when they do not necessarily have the experience or training of an EHO) was questioned in submissions on the Public Health Bill. Health protection officers also have extensive powers (shared with medical officers of health) in regards to infectious disease management, burial orders, quarantine, and inspection. These powers have been continued in the Public Health Bill. There is also a concern with the fact that the terms medical officer of health and health protection officer are almost used interchangeably in these sections. This does not take into account the difference in training with health protection officers having technical training but no clinical training. Care must be taken to clarify the roles, so that each is seen as separate with vital skills for environmental health management.

The Health Select Committee has also recommended that proposed clauses in the Public Health Bill be amended to emphasise that “health protection officers must be suitably qualified and experienced, consistent with the requirements for other designated officers such as environmental health officers”. While these arguments are not necessarily suggesting that current health protection officers have been poorly qualified, or have underperformed, these are risks that need to be eliminated from the legislation by clarifying their role and qualifications.

6.1.4 Cleansing Orders and Closing Orders

Orders to abate nuisances, cleansing orders and closing orders are three of the main enforcement tools used by local authorities to manage environmental hazards that may be dangerous to human health.

Cleansing orders are used where the local authority (at their discretion) believes that cleansing a building is “necessary for preventing danger to health or for rendering

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959 Health Act 1956, s 28(6).
960 Environmental Health Officers, Rodney District Council “Submission to the Health Select Committee on the Public Health Bill 2007”.
961 Health Act 1956, s 79.
962 Health Act 1956, s 86(3).
963 Health Act 1956, s 94.
964 Geoffrey Cramp, Society of the Medical Officer of Health “Submission to the Health Select Committee on the Public Health Bill 2007”.

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premises fit for occupation”. A cleansing order contains details on the method for cleansing and a time frame for when the work must be completed. If the owner or occupier of the building does not comply with the order the local authority may carry out the work and claim costs.

Closing orders are used where a property is deemed, “by reason of its situation or unsanitary condition, likely to cause injury to the health of any persons therein, or otherwise unfit for human habitation”. A medical officer of health or a “duly authorised” person from a local authority is required to present a certificate to the local authority who then issues a notice to the owner or occupier requiring that work be carried out on the property. If the works are not completed the local authority is authorised to issue a closing order “prohibiting the use of the premises for human habitation or occupation”.

Notice for repairs and closing orders are issued at the local authority’s discretion or when they receive a direction from the Director-General. The Director-General also has the discretion to direct a local authority to issue a closing order immediately and without notice if, in his or her opinion, this is required. If a local authority fails to issue a repair notice or closing order the Director-General may direct and authorise a medical officer of health to do so. The closing orders are a temporary measure and will be lifted as soon as the required work has been carried out.

In general the use of cleansing orders, repair notices and closing orders are straightforward methods that allow local authorities to ensure that buildings in the district are sanitary, and do not produce any health threats. This is supported in the building requirements under the Act, including s 39 which requires that all dwelling houses have an “adequate and convenient supply of water”, suitable provision for the sanitary disposal of “refuse water” and “sufficient sanitary conveniences”.

965 Commentary of the Health Select Committee on the Public Health Bill 2007 (177-2) at 3.
966 Health Act 1956, s 41(1).
967 Health Act 1956, s 41(1).
968 Health Act 1956, s 41(2).
969 Health Act 1956, s 41(2).
970 Health Act 1956, s 42(1)(b).
971 Health Act 1956, s 42(3).
972 Health Act 1956, s 42(4).
973 Health Act 1956, s 42(4).
974 Health Act 1956, s 39(1)(a)-(c).
975 Health Act 1956, s 45. See also the similar powers under the Building Act 2004 in regards to insanitary buildings, dangerous buildings and earthquake prone buildings.
976 Health Act 1956, s 39(1)(a)-(c).
However there are some issues with these sections, primarily as the sections are largely in their 1956 format, and are not necessarily fit for purpose in the modern setting of environmental health. When Parliament produced these sections they were intending to provide a tool for local authorities to enforce the cleansing of premises, to prevent the spread of disease, to control epidemics and to reduce health issues caused by unsanitary living conditions including overcrowding and inadequate sanitation. These provisions have become outdated and outmoded, unable to deal with the modern needs of local authorities.

For example, it was not contemplated that local authorities would be expected to use the same nuisance, cleansing order and closing order provisions to deal with issues such as contamination from clandestine methamphetamine laboratories (P labs) which have become a growing problem in New Zealand since 2000\textsuperscript{975} and present a major environmental health risk. P labs are often located in residential properties and the production results in toxic chemical residue that contaminates the air, walls, carpets and soft furnishings. Waste is often discharged through the public drainage system spreading the chemical contamination. The result is a polluted environment which is dangerous to human health.

In 2010 the Ministry of Health produced a set of guidelines to assist DHBs, territorial authorities and other agencies in dealing with the potential environmental health implications of P labs. It is interesting to note that central government has taken this approach (guidelines) rather than producing statutory provisions to provide a mandatory process for dealing with this problem. It is an onerous task for local authorities to deal with the cost and resource issues involved in cleaning up from P labs. The contaminated material must be safely disposed of, the site cleansed, and independent scientific testing carried out to ensure the dwelling is safe for human occupation. Specialised scientific expertise is required throughout the entire process. Smaller local authorities may struggle with the ability to dispose of the contaminated waste material safety and effectively.

\textsuperscript{975} In 2000 Police detected nine P labs, in 2009 Police detected 135 P labs indicating that this is a growing issue for New Zealand local authorities to deal with. Ministry of Health Guidelines for the Remediation of Clandestine Methamphetamine Laboratory Sites (Ministry of Health, Wellington, 2010) at iii.
There is no reason why a localised response is needed to deal with the P lab issue when the issue could be more effectively and efficiently dealt with via a national approach at central government level. Mandatory provisions would ensure national consistency and a pooling of scientific expertise to deal with the issue.

Instead of taking this national approach the guidelines merely supplement the approach, and highlight the use of existing provisions at territorial authority level, regional council level and DHB level to deal with the issue. Under the guidelines territorial authorities are required to use the nuisance provisions, cleansing orders and closing orders to deal with P labs. Territorial authorities are required to outline the clean up process in the cleansing order. This process includes investigating the extent of the contamination, removing and disposing of hazardous materials (including infected building materials), cleaning contaminants from the remaining surfaces and re-testing (using independent scientific testers), to ensure that there is no remaining trace of contaminants in the environment that could be “injurious to human health”.976 Closing orders may be used to avoid the property being occupied prior to decontamination. The use of cleansing orders provides no national consistency (or even district consistency).

It is important to note that while there is provision for owners or occupiers to appeal against a closing order,977 there are no provisions to allow for appeal against a cleansing order. Accordingly the Ministry of Health warns territorial authorities in the guidelines to be mindful of the lack of appeal rights and “ensure that any wording/scope of such an order is both valid and reasonable”.978 The lack of appeal rights could mean that territorial authorities are at greater risk of judicial review challenges on the basis that the grounds for producing the order was “invalid or unreasonable”.979

This puts territorial authorities in a difficult and unfair position. They are required to ensure that the cleansing order has enough detail, to satisfactorily deal with chemical contamination, but they are at threat of appeal if this is considered too onerous. A key issue here is that P labs are often located in rented properties meaning that the owner (who may not be aware of the P lab) is left to comply with the cleansing order. This

976 Health Act 1956, ss 29 and 41.
977 Health Act 1956, s 43.
979 Ministry of Health Guidelines for the Remediation of Clandestine Methamphetamine Laboratory Sites (Ministry of Health, Wellington, 2010) at 54.
places a huge financial burden on the owner to comply with the cleansing order and creates an incentive for parties to bring judicial review proceedings. This also creates the potentially dangerous situation where owners (who discover P labs in their properties) may choose to dispose of the labs secretly (to avoid costly cleansing orders). This will mean the environmental hazard, and the risk to health, will remain as new occupiers will be exposed to any chemical residue at the property.

Local authorities also have a bylaw making power (discussed further in this chapter) to make bylaws for “improving, promoting, or protecting public health, and preventing or abating nuisances”. Bylaws could be used to deal with the issue consistently in a district and avoid the use of cleansing orders, but this does not address problems in regional consistency or difficulties for councils in creating sufficient bylaws.

Regional councils are also involved in this issue due to their obligation under s 30 of the RMA to investigate land “for the purposes of identifying and monitoring contaminated land”. Contaminated land is further defined in the Act as:-

…land that has a hazardous substance in or on it that-

(a) has significant adverse effects on the environment; or

(b) is reasonably likely to have significant adverse effects on the environment.

It is interesting to note that there is no mention of adverse effects on human health. Sites that contain “hazardous substances” under this section may be identified using the Hazardous Activities and Industries List (HAIL). However the Ministry of Health has admitted that P lab sites are not likely to be identified or managed under this process, as the management of the site is normally done by the territorial authority, and not the regional council (who runs HAIL). Regional councils may be able to enforce

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980 Health Act 1956, s 64(1)(a).
982 Resource Management Act 1991, s 2(1).
983 While the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 makes express reference to human health, cl 4(b) of the regulations state that these regulations “do not deal with regional council functions under s 30 of the Act” and accordingly the regulations do not impact on the section.
P lab clean up by using enforcement orders \(^{986}\) “requiring a person to do something that…is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment relating to any land”. \(^{987}\) However this section is problematic, and may be insufficient in the case of P labs, as it relates to land (water and soil contamination) rather than contamination of the building itself. \(^{988}\) This again puts the onus on territorial authorities to use the older provisions of the Health Act 1956 to try to deal with the issue, as the RMA is insufficient to take into account the health effects.

The P lab example demonstrates that national guidelines are sometimes an inappropriate response to the problems being dealt with at local government level. This was also the experience of the “Ambient Air Quality Guidelines” before these were incorporated into the Resource Management (National Environmental Standard for Air Quality) Regulations 2004 to enforce national application. In this present situation, the guidelines merely cobble together the existing provisions which are inadequate for dealing with a new issue, not contemplated at the time the provisions were developed in 1956.

This highlights a need for these provisions under the Health Act 1956 to be updated, to allow territorial authorities to effectively deal with new and emerging environmental health problems in their districts. The Public Health Bill has largely replaced the use of cleansing orders or closing orders with rectification orders. \(^{989}\) However cl 19C(1)(d) provides a broader power for territorial authorities where “premises present a risk to public health”, to allow them to take “any remedial action required to prevent that risk (such as cleansing or disinfecting the premises)”. \(^{990}\)

In regards to P labs, the appropriateness of having the issue dealt with at local government level should also be considered. In this situation, reform is needed to place the onus on central government to create mandatory legislative provisions. This will provide the national consistency required in this matter. The cost and resources required to cleanse properties should be provided by central government who could


\(^{988}\) Ministry of Health Guidelines for the Remediation of Clandestine Methamphetamine Laboratory Sites (Ministry of Health, Wellington, 2010) at 59.

\(^{989}\) Public Health Bill 2007 (177-2), cls 171-173. However cl 391(1) provides for cleansing order and closing orders created under the current Health Act 1956 to continue.

\(^{990}\) Public Health Bill 2007 (177-2), cl 19C(1)(d).
work together with territorial authorities and regional councils to ensure the work is carried out. This would be a fairer and more efficient system ensuring the work is carried out and that the burden (of handling what is essentially a criminal matter) is borne by the tax payer rather than the rate payer.

6.2 BYLAWS

Bylaws provide a significant power for a local authority and allow it to regulate its district. As a form of subordinate legislation, local authorities can only produce bylaws when authorised by statute. While this is the same for codes and regulations, the key difference is that bylaws can be challenged “on the grounds of unreasonableness and…may be declared invalid in the courts”. Accordingly where regulations and bylaws are in conflict with each other, the regulation will prevail.

General and specific bylaw making powers are conferred on local authorities under the LGA. Territorial authority bylaws are the most relevant to environmental health. Their bylaw making powers include general bylaw powers, to make bylaws for “protecting the public from nuisance” and for “protecting, promoting and maintaining public health and safety” and specific bylaw making powers, to create bylaws to regulate “onsite wastewater disposal systems”, “waste management” and to manage and regulate water supply and “wastewater, drainage and sanitation”.

These bylaw powers provide local authorities with a broad power to regulate on environmental health matters. The ability to create bylaws to protect and maintain public health, provides particular freedom for territorial authorities to regulate on environmental health matters. However before a bylaw can be made, a local authority must first determine “whether a bylaw is the most appropriate way of addressing the perceived problem”. This is a reasonable provision to ensure that creating a bylaw (given its power) is not a local authority’s first reaction to a situation, and that
alternatives (such as using guidelines, policies or targets) will be considered first, prior to the stricter regulation of a bylaw. However, this safeguard is limited in that the local authority uses its own discretion to determine appropriateness\(^{1000}\) (essentially deciding if it will allow itself to make the bylaw).

Accordingly if a local authority decides that a bylaw is the most appropriate course of action there is no right of appeal or judicial review action, unless “the decision of the local authority was found to be clearly perverse, irrational or one that no local authority properly informed could reasonably find”.\(^{1001}\) If a local authority satisfies itself that the bylaw is an appropriate tool, it must then determine whether the bylaw is in the “most appropriate form”,\(^{1002}\) and ensure that the content of the bylaw is consistent with the New Zealand Bill of Rights Act 1990.\(^{1003}\) A special consultative procedure is provided in the Act for “making, amending or revoking bylaws”\(^{1004}\) under s 156.

Once a bylaw has been created (under the LGA) it must be reviewed after 5 years,\(^{1005}\) and then after every 10 years.\(^{1006}\) This provides a useful statutory reminder for a local authority to continually check and revise its bylaws, to ensure that they are up-to-date and are still the most appropriate tool for regulating an area.

The Health Act 1956 also provides local authorities with the ability to make bylaws. Those related to environmental health management include the ability to make bylaws for:\(^{1007}\)

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\begin{align*}
(a) & \text{ improving, promoting, or protecting public health, and preventing or abating nuisances; } \\
(g) & \text{ regulating drainage and the collection and disposal of sewage…; } \\
(q) & \text{ regulating the conduct of offensive trades…; } \\
(v) & \text{ for the protection from pollution of food intended for human consumption and of any water supply; }
\end{align*}
\]

\(^{1000}\) Local Government Act 2002, s 155(2).
\(^{1001}\) Kenneth Palmer Local Authorities Law in New Zealand (Thomson Reuters, Wellington, 2012) at 538. McCarthy v Madden (1914) 33 NZLR 1251 (SC); Waitakere City Council v Lovelock [1997] 2 NZLR 385 (CA) and Conley v Hamilton City Council [2008] 1 NZLR 789.
\(^{1002}\) Local Government Act 2002, s 155(2)(a).
\(^{1003}\) Local Government Act 2002, s 155(3).
\(^{1004}\) Local Government Act 2002, s 156.
\(^{1005}\) Local Government Act 2002, s 158.
(y) generally, for the more effectual carrying out of any of the provisions of this Act relating to the powers and duties of local authorities.

While these provisions are similar to the general provisions of the LGA, the key difference is that the Health Act confers the same powers on territorial authorities and regional councils (under the term local authorities) whereas the LGA confers powers to each group separately. The above section provides the option for bylaws to be created to regulate many core areas of environmental health, with a general provision in section 64(1)(y) providing a wide bylaw making power. However this does not provide a local authority with “free reign” to create any bylaw it desires. Any bylaw created under the Health Act is subject to the same restrictions and process provided under the LGA\textsuperscript{1008} so the same process (mentioned above) applies.

As stated previously, local authorities cannot create bylaws that conflict with the New Zealand Bill of Rights Act 1990. Similarly, local authorities are unable to make bylaws that create requirements that are additional or more restrictive than what is required in the Building Act 2004 or the building code. This is specifically mentioned in the Health Act 1956\textsuperscript{1009} and in the LGA.\textsuperscript{1010} This allows for national consistency, with the application of the standardised building code, and removes the responsibility from council to create comprehensive bylaws in this area. However, this restriction does not prevent local authorities from making bylaws to address adverse environmental effects,\textsuperscript{1011} or to set bylaws “for public health purposes”,\textsuperscript{1012} under the Health Act 1956.

Other statutes such as the Land Transport Act 1998, Litter Act 1979, Dog Control Act 1996 and Freedom Camping Act 2011 also confer bylaw making powers to deal with specific situations. As stated previously, as subordinate legislation, the validity of a bylaw can be challenged, either by the validity of the bylaw being raised as a defence, or the bylaw being subject to judicial review as to its validity.\textsuperscript{1013}

\textsuperscript{1006} Local Government Act 2002, s 159.  
\textsuperscript{1007} Health Act 1956, s 64(1)(a), (g), (q), (v) and (y).  
\textsuperscript{1008} Health Act 1956, s 67(1).  
\textsuperscript{1009} Health Act 1956, s 65A.  
\textsuperscript{1010} Local Government Act 2002, s 152.  
\textsuperscript{1011} Christchurch International Airport Ltd v Christchurch City Council [1997] 1 NZLR 573 (HC).  
\textsuperscript{1012} Kenneth Palmer Local Authorities Law in New Zealand (Thomson Reuters, Wellington, 2012) at 546.  
6.3 LOCAL AUTHORITY PLANNING

Local Authority planning has been discussed in various parts of this thesis. Chapter 5, *Environmental Health Functions of Central Government*, discusses regional and district planning in relation to national instruments and the hierarchy of planning documents. Chapter 8, *Environmental Health – Maori Perspective*, discusses consideration of Maori in local government planning. There is also further discussion of planning provisions provided in this chapter when looking at collaboration between local authorities and DHBs. Accordingly this section will consider the remainder of the key planning provisions relevant to local authorities.

Under the LGA local authorities are required to produce annual plans and long-term plans. Annual plans are basic accountability planning documents. They are adopted and amended using the “special consultative procedure”, and contain the local authority’s annual budget, together with references to the council’s long-term plan, and how the annual plan works towards this. Provision is made for public participation and copies of the annual plan are made publicly available after adoption.

Long-term plans are also produced and amended using the special consultative procedure, require a focus for public participation and must be publicly available after adoption. However long-term plans are very different from annual plans in substance. Rather than focussing on specific planning goals, and mapping out initiatives and deadlines, the long-term plan is required to produce a long-term focus (at least ten consecutive years) on addressing community needs and promoting their “social, economic, environmental and cultural well-being”. Accordingly the plan focuses on providing the “community outcomes” that the community has identified.

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1014 Local Government Act 2002, s 95.
1015 Local Government Act 2002, s 93.
1016 Local Government Act 2002, s 95(2).
1017 Local Government Act 2002, s 95(5)(a).
1018 Local Government Act 2002, s 95(5)(c) and 95(6)(b).
1019 Local Government Act 2002, s 95(7).
1020 Local Government Act 2002, s 93(2)&(5).
1022 Local Government Act 2002, s 93(10).
1023 Local Government Act 2002, s 93(7)(a).
1024 Local Government Act 2002, s 10. (Section 10 was amended in 2012 to delete the reference to well-being.)
during public consultation.¹⁰²⁵ These outcomes could include a need for more recreation spaces or community events, or more traditional outcomes, focused on clean water supply or sanitary infrastructure upgrades. The long-term plan is continually evolving as each annual plan ends, and reflects on the progress made, and the direction of the local authority’s long term outlook. Accordingly the plan can be amended at any time to allow for changes in direction and community need.¹⁰²⁶

6.3.1 Regional Policy Statements, Regional Plans and District Plans

Further planning provisions are provided under the RMA. Sections 59 to 62 provide for regional authorities to produce regional policy statements (RPS) in accordance with their functions under the Act.¹⁰²⁷ The purpose of a RPS is to provide for the “integrated management of the natural and physical resources of the whole region”.¹⁰²⁸ The RPS must take into account other plans, iwi plans and plans of adjacent regional authorities under s 61. The RPS must clearly lay out the objectives of the plan, the reasons for these objectives and the anticipated environmental results.¹⁰²⁹ This is achieved through identifying any significant resource management issues for the region and identifying the local authority responsible for how these issues are managed.¹⁰³⁰ This includes a responsibility to “avoid or mitigate natural hazards”,¹⁰³¹ control adverse effects of hazardous substances in the region,¹⁰³² and “maintain indigenous biological diversity”.¹⁰³³

Sections 63 to 70 provide for the creation of regional plans and regional coastal plans to enable a regional council to carry out functions and obligations under the Act.¹⁰³⁴ These provide the objectives, policies and rules for a region.¹⁰³⁵ Regional plans may be created to control the land uses delegated to the regional council under s 30, or to respond to specific situations outlined in s 65. Accordingly regional plans may contain

¹⁰²⁶ Local Government Act 2002, s 93(4).
¹⁰³⁴ Resource Management Act 1991, s 63(1).
¹⁰³⁵ Resource Management Act 1991, s 67(1).
specific rules to control environmental health issues including soil conservation,\textsuperscript{1036} water quality and quantity,\textsuperscript{1037} water ecosystems,\textsuperscript{1038} natural hazards,\textsuperscript{1039} hazardous materials,\textsuperscript{1040} the taking of water,\textsuperscript{1041} and discharge of contaminants “into or onto land, air or water”.\textsuperscript{1042} Further control over water takes, and management of the marine environment is shared with the Minister of Conservation.\textsuperscript{1043}

A regional council may also consider the creation of a regional plan where there is a “significant need or demand for the protection of natural and physical resources”,\textsuperscript{1044} where there are specific threats from hazardous substances\textsuperscript{1045} or where the use of land and water could have “adverse effects on soil conservation or air quality or water quality”.\textsuperscript{1046}

This allows regional plans to contain rules related to a wide variety of environmental health issues.\textsuperscript{1047} These regional rules have the same “force and effect” as a regulation promulgated under the Act (although a rule is subservient to a regulation if an inconsistency arises).\textsuperscript{1048} Sections 72 to 77D of the Act relate to the district plans of territorial authorities. These are prepared to “assist local authorities to carry out their functions in order to achieve the purpose of this Act”.\textsuperscript{1049} Territorial authorities must have regard to the same matters as regional councils, but they must also consider the effect of regional planning documents (and must be consistent with them).\textsuperscript{1050} These plans reflect the objectives, policies and rules for the district. A territorial authority may also include rules in its plan to assist it in carrying out its functions under the Act.\textsuperscript{1051} Accordingly this enables the territorial authority to make rules relating to the integrated management of natural and physical resources,\textsuperscript{1052} control of land

\textsuperscript{1036} Resource Management Act 1991, s 30(1)(c)(i).
\textsuperscript{1037} Resource Management Act 1991, ss 30(1)(c)(ii)&(iii).
\textsuperscript{1038} Resource Management Act 1991, s 30(1)(c)(iii).
\textsuperscript{1039} Resource Management Act 1991, s 30(1)(c)(iv).
\textsuperscript{1040} Resource Management Act 1991, s 30(1)(c)(v).
\textsuperscript{1041} Resource Management Act 1991, s 30(c).
\textsuperscript{1042} Resource Management Act 1991, s 30(f).
\textsuperscript{1043} Resource Management Act 1991, s 30(1)(d).
\textsuperscript{1044} Resource Management Act 1991, s 65(3)(b).
\textsuperscript{1045} Resource Management Act 1991, s 65(3)(c).
\textsuperscript{1046} Resource Management Act 1991, s 65(3)(b).
\textsuperscript{1047} Resource Management Act 1991, s 68(1).
\textsuperscript{1048} Resource Management Act 1991, s 68(2).
\textsuperscript{1049} Resource Management Act 1991, s 72.
\textsuperscript{1050} Resource Management Act 1991, s 74.
\textsuperscript{1051} Resource Management Act 1991, s 76.
\textsuperscript{1052} Resource Management Act 1991, s 31(1)(a).
development\textsuperscript{1053} (including subdivision\textsuperscript{1054}), natural hazards,\textsuperscript{1055} hazardous substances,\textsuperscript{1056} use of contaminated land,\textsuperscript{1057} “maintenance of indigenous biodiversity\textsuperscript{1058}, control of noise emissions\textsuperscript{1059} and control of activities on “the surface of water in rivers and lakes”.\textsuperscript{1060} These rules also have the “force and effect of a regulation”,\textsuperscript{1061} but are subordinate to a regulation if a conflict is found.

The Auckland Council is subject to specific planning provisions under the Local Government (Auckland Council) Act 2009. There are some significant provisions in the Act which place an obligation on Auckland Council to collaborate with central government and other stakeholders in preparing the Auckland (spatial) plan.\textsuperscript{1062}

\textbf{6.3.2 Enforcement Remedies}

Where a person breaches the rules in a regional or district plan, various enforcement remedies are used to recognise the breach and enforce the rule. These remedies include civil enforcement and prosecution, enforcement orders, interim enforcement orders, abatement notices, excessive noise directions and water shortage directions.

Under s 17(2) of the RMA an enforcement order or abatement notice can also be used\textsuperscript{1063} to “require a person to cease, or prohibit a person from commencing, anything that … is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment”.\textsuperscript{1064} The section can also be used to require a person to take action and do something which is “necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by … that person”.\textsuperscript{1065}

However abatement notices and enforcement orders cannot be used if the “adverse effect” of a lawful activity has already been expressly recognised when issuing a

\begin{footnotes}
\item[1053] Resource Management Act 1991, s 31(1)(b).
\item[1054] Resource Management Act 1991, s 31(2).
\item[1059] Resource Management Act 1991, s 31(d).
\item[1060] Resource Management Act 1991, s 31(e).
\item[1061] Resource Management Act 1991, s 76(2).
\item[1062] Local Government (Auckland Council) Act 2009, ss 79 and 80.
\item[1063] See Marlborough District Council v New Zealand Rail Ltd [1995] NZRMA 357 (PT).
\item[1064] Resource Management Act 1991, s 17(3)(a).
\item[1065] Resource Management Act 1991, s 17(3)(b).
\end{footnotes}
resource consent for that activity.\textsuperscript{1066} Any person may apply for an enforcement order, but it is the environment court or an enforcement officer who has the discretion to determine if something fits within these categories. A local authority can authorise its officers to act as enforcement officers\textsuperscript{1067} to carry out the powers of an enforcement officer under the Act.\textsuperscript{1068}

An enforcement order issued by the environment court will require a person to remedy the behaviour complained of in s 17(2), or will require a person to comply with the Act or “any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation, … a heritage order, or a resource consent”.\textsuperscript{1069} This may involve a person being ordered to cease an action to ensure compliance, being ordered to take action to ensure compliance, or being ordered to pay costs relating to the enforcement.

A person’s resource consent may be altered or cancelled if the application for enforcement highlights inaccuracies that weigh against the consent being issued.\textsuperscript{1070} If a person fails to comply with an enforcement order the work may be carried out on their behalf and expenses can be claimed.\textsuperscript{1071} Where the environment court or district court deem it necessary, an interim enforcement order may be issued without requiring formal notice or a hearing. The order will then remain in force until the enforcement order application is heard.\textsuperscript{1072}

Abatement notices are notices served by an enforcement officer requiring a person to cease behaviour that “is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment”.\textsuperscript{1073} They may also be used to stop a person acting, or make a person act, in order to ensure compliance with the Act, regulations, rule, plan, proposed plan and resource consent.\textsuperscript{1074} The abatement notice is served at the discretion of the

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\textsuperscript{1067} Resource Management Act 1991, s 38.
\textsuperscript{1068} Resource Management Act 1991, s 38(1)(b).
\textsuperscript{1069} Resource Management Act 1991, ss 314(1)(a)&(b).
\textsuperscript{1070} Resource Management Act 1991, ss 314(1)(c).
\textsuperscript{1071} Resource Management Act 1991, ss 315.
\textsuperscript{1072} Resource Management Act 1991, ss 320.
\textsuperscript{1073} Resource Management Act 1991, ss 322(1)(a)(ii).
\textsuperscript{1074} Resource Management Act 1991, ss 322(1)(b).
enforcement officer and may include such conditions as the enforcement officer sees fit. A person may appeal an enforcement order under s 325 of the Act.

Excessive noise is controlled through either an abatement notice or an excessive noise direction. Noise is deemed excessive under the Act where the noise is “under human control” and the volume unreasonably interferes with “the peace, comfort and convenience of any person”. Examples of noise sources given in the Act include noises made by music, appliances, machines, people, explosions or vibrations. Noises made by planes, trains and vehicles driven on roads are excluded under s 326(2). An enforcement officer will issue an excessive noise direction where the officer receives a complaint and, on their discretion, determines that the noise is excessive.

Where a person fails to comply with an abatement notice or excessive noise direction to cease noise, the enforcement officer has the power to “enter the place where the noise source is situated (with a constable if the place is a dwellinghouse)” and take reasonable steps to reduce the noise to an acceptable level, including seizing and removing the source of the noise if necessary. An abatement notice or excessive noise direction cannot be issued if a person responsible for the noise cannot be identified. However s 328(4) still allows the excessive noise to be addressed by giving the enforcement officer the power to enter the area where the noise is produced and control or remove the noise source.

Water shortage directions are issued by regional councils where the council considers there is a “serious temporary shortage of water in its region or any part of its region”. The directions are a temporary measure and last 14 days prior to being “amended, revoked or renewed”. These orders are an effective means of controlling the “taking, use, damming or diversion of water” and the “discharge of contaminants

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1077 Sykes v Rotorua District Council (1992) 2 NZRMA 326 (PT).
1082 Resource Management Act 1991, ss 323(2) & 238(3).
into water”\textsuperscript{1086} where, given the reduced water level, it could result in environmental harm.

Accordingly regional policy statements, regional plans and district plans are useful vehicles for environmental health protection and management. The plans provide an opportunity for local government to create specific rules on environmental health issues including land use, soil contamination, water quality, biodiversity and ecosystem management, hazardous substances, natural hazards and noise emissions. A wide variety of enforcement remedies are used to ensure compliance. These planning rules, together with the regulation and bylaw making powers in the RMA are relatively comprehensive, and provide the main source of regional council and territorial authority environmental health intervention powers.

To increase the efficiency and effectiveness of these tools, steps must be taken to improve the quality of the current plans that are implemented. Further coordination between regional councils and territorial authorities at both the planning and implementation stages would assist in avoiding gaps in plans and overlaps in jurisdictions. Central government may aid in this process by increasing planning education and guidance for local government, and increasing national guidance and direction through policy and national instruments. This would allow for the more effective utilisation of a promising tool in environmental health management. These matters are discussed in detail in latter parts of this thesis.\textsuperscript{1087}

6.4 OTHER PROVISIONS RELEVANT TO ENVIRONMENTAL HEALTH

6.4.1 Sanitary Works

The Health Act requires local authorities to provide sanitary works for their district, including drainage works, sewerage works, sewerage disposal works, water works, and “works for the collection and disposal of refuse, nightsoil, and other offensive matters”.\textsuperscript{1088} This is a large undertaking for local authorities and requires a huge

\textsuperscript{1086} Resource Management Act 1991, s 329(1)(b).
\textsuperscript{1087} See collaboration and health impact assessment discussions in the latter part of this chapter. See chapter 7, Critical Analysis of Central and Local Governments’ Environmental Health Functions and chapter 9, Proposed Solutions and Reforms and chapter 10, A Look to the Future and Conclusions.
\textsuperscript{1088} Health Act 1956, s 25(1)(a),(b)&(c).
investment in infrastructure to service their local communities. The provision is mandatory, and does not provide any discretionary power to the local authority. Instead, the Governor-General by “Order in Council”, may directly order local authorities to provide “any other works” that the Governor-General declares sanitary works.\textsuperscript{1089} The Minister also has the power, via requisition, to direct local authorities to provide sanitary works (or alter and / or extend sanitary works) at the Ministers discretion.\textsuperscript{1090} Local authorities can enter joint agreements (with the consent of the Director-General) to provide shared sanitary works over districts.\textsuperscript{1091} Consultation with local authorities is provided under s 25(9), but there is no express requirement for the Director-General to take the local authorities opinion into account. This is a direct removal of power and decision making to central government level and provides national uniformity and consistency.

The provision of such expensive works and infrastructure can be a financial burden on the local authority (and ratepayers of the district). Accordingly s 27A of the Health Act provides for local authorities to receive grants or subsidies from the Ministry, for the provision of “public water supplies, refuse disposal works, sewerage works and works for the disposal of sewage”.\textsuperscript{1092} However the provision of the funds is based on government policy and the Minister’s discretion and what he or she “may think fit in the particular case”.\textsuperscript{1093} Without a set criteria to satisfy, it is difficult for local authorities to secure this funding or rely on it when planning infrastructure development.\textsuperscript{1094} As a result local authorities are in a position where they are ordered to provide the infrastructure, (and must do so to comply with the Act) but may be unable to financially support the venture, without additional central government

\begin{footnotesize}
\begin{itemize}
\item[1089] Health Act 1956, s 25(1)(k).
\item[1090] Health Act 1956, s 25(2).
\item[1091] Health Act 1956, s 25(3).
\item[1092] Health Act 1956, s 27A. See further discussion of s 27A in Chapter 9, Proposed Solutions and Reforms at point 9.2.5.
\item[1093] Health Act 1956, s 27A(1).
\item[1094] Availability of the subsidy depends on current government policy. This can lead to problems where councils (who have not received a subsidy) take on debt in order to provide upgraded infrastructure. See for example the Kaipara District Council overspending on the Mangawhai wastewater scheme. The debt from the scheme led to a proposed rates increase of approximately 30%. Mangawhai ratepayers have started legal proceedings against the council which continue in 2014. One News “Kaipara District Council faces another day in Court” (4 February 2014) TVNZ Website < http://tvnz.co.nz/national-news/kaipara-district-council-faces-another-day-in-court-5822930>.
\end{itemize}
\end{footnotesize}
funding. This has led to funding and spending conflicts between local and central government and is one of the main reasons for the current local government reform.1095

The Health Select Committee, in their recommendations on the Public Health Bill 2007, acknowledged the concerns of local authorities that the Minister’s directive powers in this area could have “serious funding implications for Long Term Council Community Plans”.1096 However they dismissed the severity of the situation based on the fact that these powers are “very infrequently used…in rare cases where an authority has seriously neglected its sanitary responsibilities”.1097 Accordingly the substance of s 25 remains (in cl 162) but the Committee has recommended increasing the consultation provision, to provide for direct consultation between the Minister and local authority as to the proposed direction and the territorial authority’s timeframes, “planning cycle and the interests of public health”.1098 While not eroding central governments control, the change in consultation provision would at least ensure dialogue between central and local government, and allow local government to explain their position. It is unknown whether these changes proposed by the committee will be accepted by Parliament.

6.4.2 Water

The provision of drinking water is specifically included in Part 2A of the Health Act 1956 in ss 69A to 69ZZE. These provisions were introduced in 2008,1099 and provide for the protection of public “health and safety”, by promoting “adequate supplies of safe and wholesome drinking water from all drinking-water supplies”.1100 This is to be achieved by central government establishing a register of drinking water suppliers and issuing drinking-water standards,1101 and local authorities providing the implementation for the provisions.

The medical officer of health also has an important role in ensuring safe drinking water. Under s 62 of the Act the medical officer of health has the power to issue a certificate to a local authority, for any “watercourse, stream, lake, or other source of water supply” if

1095 As discussed in chapter 9, Proposed Changes and Reforms, when looking at the change to the purpose of local government in s10 of the Local Government Act 2002.
1096 Commentary of the Health Select Committee on the Public Health Bill 2007 (177-2) at 6.
1097 Commentary of the Health Select Committee on the Public Health Bill 2007 (177-2) at 7.
1098 Public Health Bill 2007 (177-2), cl 162(6).
1099 By s 7 of the Health (Drinking Water) Amendment Act 2007.
1100 Health Act 1956, s 69A(1).
1101 Health Act 1956, s 69A(2)(a)&(b).
(in his or her discretion) the water source is so polluted, that “the water therein...is dangerous to health”.\(^{1102}\) The medical officer of health can revoke the certificate once he or she is satisfied that there is no longer a health threat.\(^{1103}\) This is a powerful function as the local authority must comply with the certificate and cease use of the water source once issued. The section also demonstrates the consideration of water quality based on human health and consumption (rather than the needs of the environment under the RMA).

The regional council is also involved in making rules for water quality under s 69 of the RMA. These rules must provide for the “water quality classes” outlined in schedule 3 of the RMA but may be more “stringent or specific” if, in the regional councils opinion, the current standards are not adequate to protect water quality.\(^{1104}\) Parliament has provided a safeguard on this power by providing that regional councils must not set standards which will lead to a reduction in water quality “unless it is consistent with the purpose”\(^{1105}\) of the RMA.

6.5 DISTRICT HEALTH BOARDS

6.5.1 The Objectives and Functions of District Health Boards (DHBs)

As stated in earlier chapters, the Ministry of Health (MoH) adopts a policy driven role and gathers information on health needs and requirements (from various sources including DHBs) and, in consultation with various committees, develops health targets. These health targets are then used by the Minister to establish (and revise) national health and disability strategies and to produce a letter of expectation for DHBs. This letter, together with the national health and disability strategies, is incorporated into each DHBs statement of intent announcing key priorities for the year. Accordingly, the goals of a DHB directly reflect the national health targets and propose strategies to achieve them. The requirement that DHB plans are consistent with Ministry of Health national strategies\(^{1106}\) (together with the opportunity to work together on collaborative projects) provides for national direction and regional consistency.

\(^{1102}\) Health Act 1956, s 62(1).
\(^{1103}\) Health Act 1956, s 62(2).
\(^{1104}\) Resource Management Act 1991, s 69(b).
\(^{1105}\) Resource Management Act 1991, s 69(3).
\(^{1106}\) New Zealand Public Health and Disability Act s 38(2)(d).
DHBs were established as Crown entities\(^{1107}\) under part 3 of the NZPHDA.\(^{1108}\) Their objectives, contained in s 22 of the Act, require DHBs to “improve, promote, and protect the health of people and communities”\(^{1109}\) while reducing health disparities.\(^{1110}\) In reoccurring themes for local government, DHBs are required to carry out this role while fostering “community participation in health improvement,”\(^{1111}\) and operating in a “financially responsible manner”.\(^{1112}\)

Each DHB’s board consists of seven elected members and four appointed members.\(^{1113}\) The statute provides for mandatory Maori representation, with proportional representation based on the DHB’s population (with a minimum of two Maori members).\(^{1114}\) The board of each DHB is responsible for establishing three different advisory committees who will provide the board with advice. The Community and Public Health Advisory Committee provides advice on “health improvement measures”\(^{1115}\) and the Disability Support Advisory Committee gives advice on disability issues.\(^{1116}\) The Hospital Advisory Committee gives advice on “matters relating to hospitals”.\(^{1117}\) Each board must provide for mandatory Maori representation.\(^{1118}\)

DHBs are largely responsible for carrying out national policy objectives through roles in purchasing and providing health services\(^{1119}\) (including owning and funding public hospitals)\(^{1120}\) and for assessing and monitoring the health status of its community\(^{1121}\) (for the purposes of reporting back to the MoH). This may be carried out by the DHBs or through cooperative agreements or arrangements with territorial authorities.\(^{1122}\)

\(^{1107}\) New Zealand Public Health and Disability Act 2000, s 21.

\(^{1108}\) New Zealand Public Health and Disability Act 2000, s 19.

\(^{1109}\) New Zealand Public Health and Disability Act 2000, s 22(1)(a).

\(^{1110}\) New Zealand Public Health and Disability Act 2000, s 22(1)(e).

\(^{1111}\) New Zealand Public Health and Disability Act 2000, s 22(h).

\(^{1112}\) New Zealand Public Health and Disability Act 2000, s 41.

\(^{1113}\) New Zealand Public Health and Disability Act 2000, s 29.

\(^{1114}\) New Zealand Public Health and Disability Act 2000, s 29(4). Further discussion of the representation of Maori in environmental health is provided in chapter 8 of this thesis, Environmental Health – Maori Perspective.

\(^{1115}\) New Zealand Public Health and Disability Act 2000, s 34.

\(^{1116}\) New Zealand Public Health and Disability Act 2000, s 35.

\(^{1117}\) New Zealand Public Health and Disability Act 2000, s 36.

\(^{1118}\) See table in appendices to thesis, Committees Table – relevant to Environmental Health.


\(^{1121}\) New Zealand Public Health and Disability Act 2000, s 23(1)(g).

\(^{1122}\) Health Act 1956, ss 4-22 and New Zealand Public Health and Disability Act 2000, ss 24.
Parliament emphasised this cooperative approach in changes to the NZPHDA in 2010 requiring DHBs to “seek the optimum arrangement for the most effective and efficient delivery of health services...to meet local, regional and national needs” and to collaborate with parties at “local, regional and national level for the most effective and efficient delivery of health services”.  

While these changes are focussed on improving cost efficiency, it highlights the importance of a collaborative whole-of-government outlook for health initiatives and provides the potential for DHBs to work with other parties to provide services at multiple levels.

As well as providing national direction through national health and disability strategies the Minister of Health has the ability to give directions to DHBs. These direction powers are very broadly worded in the statute, essentially authorising the Minister to give any direction which, in his or her discretion, is “necessary or expedient in relation to any matter relating to a DHB”. However, the direction must be “consistent with the objectives and functions of the DHB” which provides a safeguard. There is also a provision for the Minister to consult with DHBs prior to making directions for the DHB to support “government policy on improving the effectiveness and efficiency of the public health and disability sector”. However, the section states that the “Minister must, to the extent (if any) that the Minister considers necessary….consult”. Accordingly, the wording of this section is very weak and dismissive of any real consultation requirement, as the level (and actual occurrence) of consultation is purely at the Minister’s discretion.

This strongly reflects Parliament’s desire for national control and direction as the DHBs must give immediate effect to any Ministerial directions. However, the control is also moderated by the fact that the Minister, in carrying out this role (including giving directions) is required to have regard to all New Zealand health strategies and “the district strategy plan of the DHB”.

The district strategy plans of a DHB are produced each year based on Ministerial direction and the clarification at central government level of current policy goals and

1123 New Zealand Public Health and Disability Act 2000, s 23(1)(ba).
1125 New Zealand Public Health and Disability Act 2000, s 32(2)(c).
1126 New Zealand Public Health and Disability Act 2000, s 33B(1).
1127 New Zealand Public Health and Disability Act 2000, s 33B(6).
1128 New Zealand Public Health and Disability Act 2000, ss 26, 27 and 33.
health targets. These plans outline how a DHB aims to coordinate and address health service needs (at local, regional and national level)\textsuperscript{1129} while achieving the “optimum arrangement for the most effective and efficient delivery of health services”.\textsuperscript{1130} Each plan must reflect the direction of both the New Zealand health strategy and disability strategy. Prior to the district health plan coming into effect it must be approved by the Minister of Health and signed by each DHB who is involved in the plan.\textsuperscript{1131}

6.5.2 District Health Boards Role in Environmental Health

Every DHB’s core environmental health function involves promoting “the reduction of adverse social and environmental effects”\textsuperscript{1132} on their communities. For example the Auckland District Health Board’s “Statement of Intent 2012/2013” provides practical insight into how DHB’s provide for environmental health in local health planning. Environmental health provisions are considered prevention services, which require the board to focus on the “physical and social environments to influence health and well-being”.\textsuperscript{1133} The preventative aspect involves controlling and monitoring environmental hazards to reduce the potential for harm to human health. This is also relevant to addressing health disparities as vulnerable members of the population are more likely to be exposed to environmental hazards in their environment and therefore “stand to gain the most from a regulatory environment that protects population health”.\textsuperscript{1134}

The 2012/2013 statement of intent outlined several environmental health related initiatives and activities. Most of these were focused on providing surveillance and investigation of hazards including “air quality, border health protection, burial and cremation, contaminated land, water quality, hazardous substances, radiation, sewage, waste management [and] resource management”.\textsuperscript{1135} While the statement makes no direct reference to involvement by regional or territorial authorities in managing this area, their involvement is inferred from the DHB’s commitment to enter various collaborative agreements with other parties to address these issues.

\begin{flushright}
\textsuperscript{1129} New Zealand Public Health and Disability Act 2000, s 38(2)(a).
\textsuperscript{1130} New Zealand Public Health and Disability Act 2000, s 38(2)(a)(iii).
\textsuperscript{1131} New Zealand Public Health and Disability Act 2000, s 38(8).
\textsuperscript{1132} New Zealand Public Health and Disability Act 2000, s 23(1)(b).
\textsuperscript{1133} Auckland District Health Board Statement of Intent 2012/2013 (Auckland District Health Board, Auckland, 2012) at 43.
\textsuperscript{1134} Auckland District Health Board Statement of Intent 2012/2013 (Auckland District Health Board, Auckland, 2012) at 43.
\textsuperscript{1135} Auckland District Health Board Statement of Intent 2012/2013 (Auckland District Health Board, Auckland, 2012) at 43.
\end{flushright}
A further activity, of relevance to environmental health planning, is the board’s commitment to providing advice via submissions on central government’s “health policies, regulations and legislation”. The board’s commitment to being involved ensures that the national policy will reflect the needs and interests of the individual DHB involved in implementation (however the impact of the consultation is still subject to the Minister’s discretion as discussed in this chapter).

6.5.3 Governance Issues for District Health Boards – Collaboration or Amalgamation

There are two key reoccurring themes in DHB governance – the importance of national guidance and the importance of community participation in decision making. The need to reconcile both these objectives can lead to conflicts between DHBs and central government. There are two different options that may be used to address these issues – amalgamation or collaboration.

Amalgamation

Many of the arguments regarding amalgamation of DHBs are similar to arguments on consolidating local government functions through a central body as discussed in chapter five, Environmental Health Functions of Central Government. Amalgamation, suggests that various DHBs be amalgamated into larger, centralised bodies to carry out their functions. This would provide the obvious advantage of reducing costs and collectively pooling skills and resources. In some regards the expectation that health provision could be divided into 20 different DHBs is flawed and based on an artificial perception of how communities access health services.

For example, the provision of health services in Auckland is divided into three different DHBs - the Waitemata DHB, Auckland DHB and Counties-Manukau DHB. Auckland DHB also manages the Auckland Regional Public Health Service who provide regional services across all three DHBs. The concept of each DHB providing health services for their different communities works in theory, but only if each person lives, works, socialises and accesses health care in the geographical region of the one DHB. Many

people live in one area and work or commute through the other. It is not unusual for people to “cross the boundaries” of different DHBs throughout the day meaning that someone may have an accident in one DHBs jurisdiction and require either healthcare, or immediate healthcare and then transfer back to their own DHB for further care.

This is complicated by the fact that many DHBs around the country do not have the population size to carry out all medical services required by their population at different times. Accordingly services arrangements are entered into with other DHBs so that an individual can live in one DHB but receive specialised health care, like chemotherapy, through a major DHB like Auckland DHB. As DHBs are also required to be financially accountable for their provision of services this effectively means that DHBs must pay each other back for health care provided to people from their community. The result is a complicated system where the artificial division between DHBs does not work effectively.1138

This was raised by the Auckland District Health Board during consultation on the merging of local councils into the Auckland Council1139 with the Auckland DHB acknowledging that the movement of people and the way they access health care does not adhere to the traditional geographical boundaries.

In 2008 the Crown Health Financing Agency advised the new Health Minister Tony Ryall, that “a formal reduction of DHB sovereignty in favour of regional bodies and/or central agencies”1140 was a preferable option. However central government has tended to favour collaborative approaches over amalgamation options.1141 In addressing the issues in Auckland health management, both Labour and National-led governments have attempted to increase coordination through collaboration. In 2004 the Labour government (through the Minister of Health) appointed Ross Keenan as Deputy Chairman of the Waitemata, Auckland and Counties-Manukau DHBs to provide for collaboration in the Auckland region. This approach was again favoured by the National government in 2010 who appointed Lester Levy as Chairman of the

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1137 Originally there were 21 District Health Boards. There are now 20 District Health Boards as at the date of this thesis.
1138 Brian Rudman “Three Health Boards must marry and economise” The New Zealand Herald (New Zealand, 13 February 2012).
1139 Auckland District Health Board “Submission to the Royal Commission on Auckland Governance” (2008).
1141 In their amendments to the New Zealand Public Health and Disability Act 2000 encouraging collaboration.
Waitemata and Auckland DHBs. This approach is also supported by DHBs who favour the preservation of local democracy through providing DHBs with greater options for regional activities without undermining current DHB positions.\textsuperscript{1142}

As stated by an anonymous DHB’s Chief Executive during consultation on DHB governance: \textsuperscript{1143}

\begin{quote}
You don’t have to amalgamate boards. You can achieve the same things (savings, sharing expertise, etc) in a different way and still maintain the real philosophy behind DHBs, which was local responsiveness and local ownership.
\end{quote}

Accordingly collaboration may be the key to providing the necessary coordination while still preserving local participation in decision making.

**Collaboration**

In 2009 a Ministerial Review Group reported that the DHB’s provided health services were “too fragmented” with too much “duplication” between parties.\textsuperscript{1144} Recent changes to address these issues and encourage collaboration include amendments to the NZPHDA (as discussed above), the introduction of a National Health Board and the provision for regional service planning. These initiatives are all aimed at helping DHBs work together on joint projects to improve consistency, reduce costs and resource use and share the burden of national compliance.

In creating collaboration some merging or amalgamation is occurring. While central government has dismissed amalgamation of DHBs there is support for consolidating “back office functions” across DHBs\textsuperscript{1145} and increased regionalisation of services. This is consistent with central government’s approach of decreasing unnecessary management layers and bureaucracy\textsuperscript{1146} and will, as stated by Health Minister Tony

\begin{itemize}
\item\textsuperscript{1142} Pauline Barnett, Clare Clayden, Health Reforms 2001 Research Team *Health Reforms 2001 Research Project Report No. 2 Governance in District Health Boards* (Health Services Research Centre, Wellington, 2007) at 15.
\item\textsuperscript{1143} Pauline Barnett, Clare Clayden, Health Reforms 2001 Research Team *Health Reforms 2001 Research Project Report No. 2 Governance in District Health Boards* (Health Services Research Centre, Wellington, 2007) at 16.
\item\textsuperscript{1144} Ministry of Health Regional Services Planning: How district health boards are working together to deliver better health services (Ministry of Health, Wellington, 2012).
\end{itemize}
Ryall, avoid “the 21 District Health Boards reinventing the wheel 21 times”. These initiatives have resulted in the establishment of a National Health Board and the introduction of Regional Service Plans.

6.5.4 Regional Service Plans – a method of collaboration between DHBs

In 2011, the Minister of Health’s “Letter of Expectations to DHBs” provided that “regional collaboration” was a top national priority to be built into all DHB planning initiatives via the use of regional service plans. The establishment of regional service plans required consultation between the National Health Board and DHB asking for input at DHB level rather than central government being overly prescriptive. In this way the regional service plan is a local government driven document. However section 39 of the NZPHDA provides for the Minister to have input where DHBs are in dispute over plan contents. In this situation the Minister must form an advisory body, and take their advice into account in determining the outcome of any dispute.

While this planning process began in the 2011/2012 period, regional service plans are expected to have their first substantial impact on services in the 2012/2013 period. For example, one of the first regional service plans was a collaboration between Auckland DHB, Counties-Manukau DHB, Waitemata DHB and Northland DHB providing a regional service plan aimed at providing a standardised level of “heart health” treatment in the “northern region” of New Zealand. This change to regionalised service means that patients are moved between the various DHBs depending on the level of specialised care required. This has allowed for patients over the northern region to all receive the same standardised level of care and has increased efficiency by concentrating medical expertise in the one area.

Auckland and Waitemata DHB have entered bilateral agreement and describe themselves as having “agreed a special governance and working relationship”. Both boards have made “regionalisation through collaboration” a key priority for providing

1147 New Zealand Government Press Release Doctors, Nurses dominate new National Health Board (2 December 2009). The number of District Health Boards has now reduced to 20.
1149 New Zealand Health and Disability Act 2000, s 39(3).
1150 New Zealand Health and Disability Act 2000, s 39(4)(a).
1151 Ministry of Health Regional Services Planning: How district health boards are working together to deliver better health services (Ministry of Health, Wellington, 2012) at 5.
health services.\textsuperscript{1153} As well as developing joint initiatives including a “joint Maori Health Strategy for 2011 – 2014”\textsuperscript{1154} to aid in effective Maori health management over the region,\textsuperscript{1155} the DHBs have reduced their advisory costs by sharing several advisory committees.\textsuperscript{1156} Both DHBs have established a “joint Collaboration Steering Group” who look for future opportunities to collaborate.

This regionalised approach has not detracted from the importance of localised input. Each DHB uses health information from their local population to determine their needs and used localised planning and initiatives to respond to these situations as necessary. In fact the increase in regionalisation has meant that the individual needs of communities can be more readily met by drawing on experience and decreasing repetitive spending. The resulting standardised level of health care afforded to populations is also fairer as people receive the same high level of care regardless of where they live.

While it is important that regional service planning is locally driven by DHBs the Ministry of Health through the National Health Board provides national direction by providing DHB planning packages. These planning guidance documents are developed in consultation with DHBs, central government agencies, the Auditor-General and Treasury\textsuperscript{1157} and aim to assist DHBs in creating plans which are consistent with the Ministerial letters of expectation and national health targets. Accordingly the planning package for 2013/2014 contains:\textsuperscript{1158}

- the Annual Plan toolkit and Regional Service Plans guidelines
- the timeframe for the review of the Annual Plan in 2013
- the Operational Policy Framework and Services Coverage Schedule documents

\textsuperscript{1152} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 2012) at 16.
\textsuperscript{1153} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 2012) at 16.
\textsuperscript{1154} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011) at 37.
\textsuperscript{1155} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011) at 37.
\textsuperscript{1156} These include the Community and Public Health Advisory Committee, Maori Health Advisory Committee and Disability Support Advisory Committee.
Providing DHBs with a toolbox for regional planning is a positive innovation which could be taken and adopted in other situations. For example, the Minister for the Environment could take a similar approach in consulting with regional and territorial authorities and creating a “toolbox” to assist in regional and district planning under the RMA. In this situation consultation could be extended to include iwi authorities and assist in the creation of iwi management plans.1159

6.5.5 Collaboration across Local Government

While central government has recognised the importance of collaboration between DHBs there has been little discussion of the importance of collaboration between DHBs and other local government bodies, such as regional and territorial authorities. This lateral connection is very important for environmental health planning which is managed by each body with a traditional health focus taken by DHBs and a traditional environmental or resource management focus taken by local authorities. Currently the connection is largely unsupported by statute, albeit for a general commitment to work together to fulfil their duties. Even the framework for public health action under the New Zealand Health Strategy1160 provides for coordination on an objective or policy level without providing any statutory incentive.

There are two lateral connections, between DHBs and local authorities, which are stated in legislation. The first is under the Health Act 1956. This Act implies that Medical Officers of Health (appointed by the Ministry of Health) will work with local authorities on a variety of public health matters and provides for requisitions under s 25 requiring local authorities to provide sanitary works.

The second example is in The Local Government (Auckland Council) Act 2009 which requires the Auckland Council to provide a spatial plan to “contribute to Auckland’s social, economic, environmental and cultural well-being through a comprehensive and

1159 For further discussion of this issue see chapter 8, Environmental Health – Maori Perspective.
1160 For further discussion of this framework see chapter 5, Central Government Environmental Health Functions.
effective long-term strategy for Auckland’s growth and development”.\footnote{1161} In preparing and implementing the plan, Auckland Council is required to consult and cooperate with various parties including central government, local communities and “other parties (as appropriate)”.\footnote{1162} The inclusion of the three DHBs in the Auckland area should be inferred here as “other parties”.

Epidemic regulations also provide for coordination between EHO and Medical Officers of Health (but this is more to coordinate the officers during an outbreak to make sure they cover the different areas rather than establishing links in their relationship).\footnote{1163}

This lack of coordination is very evident when examining the planning provisions for DHBs,\footnote{1164} regional councils and territorial authorities. In considering consultation requirements, all three local government bodies are required to consult with central government and their local community during the planning process. The provisions also require DHBs to consult with other potentially affected DHBs\footnote{1165}, regional councils must consider the need to be “consistent with the policy statements and plans of adjacent regional councils”\footnote{1166} and territorial authorities must consider the need to be “consistent with the plans or proposed plans of adjacent territorial authorities”.\footnote{1167} This requirement to be consistent with neighbouring authorities is common sense and simply avoids practical problems in applying the plans (particularly where they may be overlapping jurisdictions or shared management agreements in place, for example the shared management of a river by two territorial authorities on opposing riverbanks).

Territorial authorities are also required to ensure that their plans are consistent with regional policy statements and plans (or proposed statements and plans).\footnote{1168} However this reflects the hierarchy of planning documents\footnote{1169} rather than any sort of collaboration or cooperative relationship between regional and territorial authorities in planning. Even the requirement for both regional authorities and territorial authorities
to take into account iwi planning documents, while creating their plans, \(^{1170}\) does not involve any real collaboration or discussion between the parties.

It is extraordinary that there are no express provisions requiring DHBs, regional councils or territorial authorities to meet and collaborate with each other, or consider each others planning documents (unless it is strictly required as part of the hierarchy of planning documents). Considering all three bodies are carrying out functions and powers over the same communities, it would make sense for there to be legislatively enforced connections between the three parties. This change is fundamental to ensuring that regional plans, district plans and health plans are consistent with each other and avoid unnecessary overlaps or gaps. Even a requirement for consistency is not sufficient, as plans can be “consistent” or “have regard” to each other while still covering the same topics. This is counterproductive and wastes finances and resources. Requirements to be efficient and effective in planning, or to be fiscally responsible are still not specific enough to address these problems.

The Health Committee in their recommendations on the Public Health Bill 2007 supported the inclusion of a statutory provision which recognised “the importance of relationships between DHBs, territorial authorities and regional councils”\(^{1171}\) and provides for “non-binding protocols”.\(^{1172}\) Unfortunately the Public Health Bill 2007 has failed to progress since the Committee reported back on 26th of June 2008 and is still awaiting its second reading in Parliament.

While joint agreements are possible between parties (and do occur) there is no compulsory requirement to collaborate. DHBs appear open to these changes. In Auckland DHB’s 2012/2013 Statement of Intent, the board provided for increasing use of collaborative agreements and coordination with other parties to implement local, regional and national plans.\(^{1173}\) Of particular relevance to environmental health is Auckland DHBs commitment to enter collaborative agreements for a “healthy housing

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\(^{1170}\) Resource Management Act 1991, ss 61(2A)(a) and 74(2A).

\(^{1171}\) Public Health Bill 2007 (177-2) as reported from the Health Committee (June 2008) at 3.

\(^{1172}\) Public Health Bill 2007 (177-2) as reported from the Health Committee (June 2008) at 3.

development strategy” and to “implement a regional drinking water incident cooperation plan”. Incorporating express consultation and collaboration requirements into the legislation will encourage further DHBs to be actively involved in collaborative agreements and will ensure that all parties at local government level meet and are aware of each others goals and objectives. It would provide an opportunity for parties to share gathered data on their communities and compare whether joint initiatives are possible to address certain issues (including environmental health issues). A statutory provision that required consultation and, where feasible, collaboration would further consolidate administrative tasks, pool resources and skills and maximise the potential for local government to be effective in their environmental health management.

There are already initiatives such as health impact assessment which could be seen as a precursor for strengthening the relationship between DHBs and local authorities.

6.6 HEALTH IMPACT ASSESSMENT – A Core Tool at Local Government Level

Health Impact Assessment (HIA) is a useful tool most commonly used at the project level in New Zealand to consider the impacts of a proposed project during the resource management process. However the concept of HIA can have an important impact on policy making by providing a tool which encourages collaboration between parties and recognising the connections between health and environmental planning when creating policies and plans.

While the idea of health being intrinsically linked to the environment is a simple concept, environment health planning faces two main difficulties, both of which can be addressed by the use of HIA at policy level.

The first issue is the number of parties who are given the obligation of planning for health and community well-being in the one jurisdiction. For example, a local authority is required to “promote the social, economic, environmental, and cultural well-being of

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communities”\textsuperscript{1176} and “improve, promote and protect public health within its district”\textsuperscript{1177}. DHBs are required to “improve, promote and protect” health.\textsuperscript{1178} Agencies under the Land Transport Management Act 2003 are required to “consider how their work “protects and promotes public health”\textsuperscript{1179} and “ensure environmental sustainability”\textsuperscript{1180} and consult with Maori.\textsuperscript{1181} HIA is the perfect tool for “cross-sectional working”\textsuperscript{1182} allowing multiple parties to collaborate on integrated policy development which effectively incorporates health into environmental planning.

The second issue is that health is one of several other factors that is taken into account by these parties. This is actually one of the founding premises of HIA assessment, the idea that health is influenced by “factors that lie outside the health sector”\textsuperscript{1183} and takes place in a difficult environment with many factors influencing policy developments including political and administrative issues.\textsuperscript{1184}

In following a HIA approach, local government bodies could gather together current data on their local communities and their list of goals and objectives together with basic plans or methods as to how these could be achieved. This could also involve identifying issues that require a cross-jurisdictional approach, or highlighting situations where joint or collaborative agreements could have the most effect. HIA would then require territorial authorities, DHBs, central government ministries, community groups, representatives and advisors to get together and consider the joint issues in environmental health faced by the community.

During this time the various policies of each party could be evaluated to determine their potential effectiveness and identify weak points which will hinder implementation. This could address some of the main issues in environmental health planning by

\begin{itemize}
  \item \textsuperscript{1175} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 2012) at 38.
  \item \textsuperscript{1176} Local Government Act 2002, s 10 (prior to amendment in 2012).
  \item \textsuperscript{1177} Health Act 1956, s 23.
  \item \textsuperscript{1178} New Zealand Public Health and Disability Act 2000, s 22(1)(a).
  \item \textsuperscript{1179} Land Transport Management Act 2003, s 14(a)(ii)(D).
  \item \textsuperscript{1180} Land Transport Management Act 2003, s 14(a)(ii)(E).
  \item \textsuperscript{1181} Land Transport Management Act 2003, ss 4 (Treaty of Waitangi) and 18H (consultation and Maori contribution). See table on environmental health provisions relevant to Maori in the appendix of this thesis and the Maori consultation discussion in chapter 8, \textit{Environmental Health – Maori Perspective}.
  \item \textsuperscript{1182} Public Health Advisory Committee \textit{A Guide to Health Impact Assessment: A Policy Tool for New Zealand} (2nd edition, Public Health Advisory Committee, Wellington, 2005).
  \item \textsuperscript{1184} Public Health Advisory Committee \textit{A Guide to Health Impact Assessment: A Policy Tool for New Zealand} (2nd edition, Public Health Advisory Committee, Wellington, 2005) at 8.
\end{itemize}
identifying problems, encouraging joint initiatives (to avoid overlap), identifying “unintended negative consequences”\textsuperscript{1185} of any proposals and establishing working relationships for the future.

However HIA has several drawbacks for local government. The process (as described above) can be very time consuming and, when coupled with community consultation requirements, can be a burden on a party’s time and resources when they participate. There is often conflict between parties as to what is required to deal with a problem, who has jurisdiction or responsibility and who will be liable for problems if they occur. These problems can often deter parties from wanting to be involved in the process, particularly if they fear that the “difficult” issues will be passed on to them. Parties may also be reluctant to admit when they lack capacity or expertise to deal with a problem so a supportive environment encouraging a neutral exchange of ideas must be fostered for HIA to be truly effective.

Another issue, or failure with the success of HIA in environmental health planning is the failure of parties to continue on with HIA recommendations in the long term.\textsuperscript{1186} A study on HIA effectiveness in urban planning in New Zealand concluded that the problem with “follow through” was due to “a perceived lack of accountability”, “changing priorities” and a lack of the funding and resources needed for implementation.\textsuperscript{1187}

These issues could be addressed by central government providing more national direction and support for HIA processes in local government policy and planning. Legislative requirements encouraging lateral consultation and collaboration (as discussed above) could provide the “push” required for parties to meet and carry out the HIA process. Additional funding from central government or adjustment of time constraints may also be required to make the process effective. Central government must support the introduction of HIA initiatives through both funding and resources to ensure that a best practice model can be established for incorporating health into local government environmental planning. This may also include the training and supply of

HIA facilitators who could assist in facilitating contact between the various parties and keep the process moving.

A further option to ensure the implementation of the HIA process is the placing of a public health professional in a territorial authority to provide assistance in environmental health planning from the public health perspective. This approach has been successful in the United Kingdom where “public health professionals have been jointly employed by health agencies and local government”. 1188 This working across agencies improves a local authority’s ability to consider the health impacts of their policies and integrate health concepts into their functions.1189 While Medical Officers of Health do provide advice or direction to local government on various environmental health initiatives the direct employment of a health professional in a dual role between a territorial authority and a DHB could directly impact on the quality of environmental health planning.

6.7 SUMMARY

Accordingly local government is responsible for the day to day management and monitoring of environmental health issues. While it has the ability to make plans, rules and orders in this area, these powers are subordinate to the powers of central government. While central government provides national direction, local government has scope to follow their own initiatives and are required to create their own plans and long term goals. Further analysis of the functions of both central and local government is provided in chapter 7 of this thesis.

This chapter provides further discussion of the issues raised in chapter 5, *Environmental Health Functions of Central Government* (Chapter 5), and chapter 6, *Environmental Health Functions of Local Government* (Chapter 6). The chapter starts by considering the central government / local government relationship and the issues arising from the nature of this relationship and the split in role and responsibility between the parties. The chapter then aims to provide a recap of some of the key issues and reform options raised in these chapters prior to the broader discussion on proposed solutions and reforms provided in chapter 9 of the thesis.

### 7.1 THE CENTRAL GOVERNMENT / LOCAL GOVERNMENT RELATIONSHIP

As addressed in Chapter 5, the core function of central government in environmental health is to provide policy direction and guidance. Through the Ministry of Health and the Ministry for the Environment central government is responsible for developing and implementing legislation, for standard setting, target setting and strategic planning based on a national response to environmental health matters. In particular the ability of the Ministry for the Environment to set National Environmental Standards (NES) and National Policy Statements\(^\text{190}\) (NPS) provides local authorities with the guidance required to balance national uniformity with individual community needs and variations.

Central government’s role also includes dividing responsibility between levels of government (through delegation). Once desired outcomes are set at national level these
are interpreted at local government level for implementation. NPS or NES can be introduced by central government to regulate and provide “more prescriptive controls on narrower issues”.1191

However, questions have arisen about the benefits of a split central government / local government role in environmental health and as to whether environmental health functions are best governed by this type of division. The effectiveness of central government in carrying out its environmental health role must also be analysed, including whether alternatives would be more effective.

The current system has been described as fractured and piecemeal by critics with a lack of clear direction from central government and a need for greater clarification of the framework. During discussions on water policy and sustainable management of freshwater, the New Zealand Water and Wastes Association insisted that:1192

…greater direction and leadership and clearer regulatory frameworks would create a more unified approach amongst the varied and multifarious players within the field of water management.

This opinion could also be applied when looking at other areas of environmental health as there are often multiple interested parties (including but not limited to central and local government).

This style of system has the potential to benefit a country like New Zealand with a low population density and diverse environmental conditions. As stated in previous chapters, this devolution of most “policy implementation responsibilities”1193 makes sense in allowing for local flexibility and participation. However, the retention of guidance and the ability to regulate centrally allows for national uniformity. Local authorities can benefit from the research and knowledge gathered at central government level without the burden of local cost or training. A national approach helps minimise potential conflicts between a national and local approach and thus allows the two to

1192 New Zealand Water and Wastes Association “Water Policy / Sustainable Management of New Zealand’s Fresh Water” New Zealand Water and Wastes Association <P:\NZWWA\Advocacy\Ratified policy docs\090227 final central leadership.doc> at 1.
work together. For example, there may be competing interests at local and national level.

While central government is influenced by the general public, the close proximity between local authorities and the community can lead to local authorities being conflicted between implementing national considerations and community preferences. A particular activity may be discouraged on a national level as it creates negative effects on the physical environment. These effects may also be linked with negative impacts on health invoking an environmental health response with central government discouraging the activity. However local government may be affected by community preference when regulating the activity and may have to weigh up positives related to this activity, such as economic gain and employment opportunities. Depending on the priorities of both levels of government, conflict may occur. The reverse can also happen where central government makes a decision which the local community disagrees with causing increased pressure on local government. Examples of this include the locating of prisons, low cost state housing, sewage processing plants, power lines or cell phone towers. These are all used by the wider region or on a national scale, but they impact (sometimes negatively) on the local community.

National guidance may effectively reduce the pressure and influence on local authorities in this situation. In other cases the actions of central government have had an adverse effect on local government tension.

However the current system of local and central government split must be examined to ascertain whether it actually works in practice in the manner described above and whether, if it does not work, this is a fault of the current system (through either flawed devolution design or the way the system is implemented).

Examination of central government powers under the Health Act 1956 (to regulate) and the Resource Management Act 1991 (to set national policy and standards) suggests that the tools for national guidance are already available. However heavy criticism aimed at central government argues that central government fails to utilise these tools and that this leads to a lack of clarity in the interface between the different levels of government.
and a lack of direction for local government. This factor is alleged to be responsible for inconsistent and competing approaches.

7.1.1 Flawed System Design

It does appear that splitting and networking between various parties in a framework approach can lead to unnecessary complexity in design. Within central government itself, environmental health policy is split\textsuperscript{1194} between the Ministry for the Environment, Ministry of Health, Ministry of Primary Industries, Ministry of Economic Development, Treasury, Department of Building and Housing and the Ministry of Social Development, leading to overlapping, duplication and capacity issues. This coordination at central government level can be further complicated in that central government can be split following different philosophies. For example, the Ministry for the Environment favours devolution whereas the Department of Building and Housing favours centralisation of power.

This issue was raised in 2005 at the Whakatane local government meeting of the “Water Programme of Action” which looked at the deterioration of water quality in Lake Rotoiti.\textsuperscript{1195} Among the issues raised (which included lack of central government direction) the point was made that central government efficiency and effectiveness was being compromised by a lack of a “single voice” at central government level:\textsuperscript{1196}

> It is better to have a single voice from central government rather than a number of different views from Ministry for the Environment, Department of Conservation, Ministry of Economic Development etc. This leads to mixed messages. Central government has a better chance of influencing if they have one clear message.

The division of roles between central government and local government was also addressed at the meeting with calls for central government to deal with “the big picture

\textsuperscript{1194} See Central Government Table in the appendices of this thesis.
and guidance” and local government to address the issues with “hands-on work” at the local level.

While the various players in environmental health have been recognised in strategy planning such as the New Zealand Health Strategy and the resulting framework identifies each group and provides links between them, this “whole-of-government” approach is criticised as being non-productive and resulting in “further regulatory layers” without clear national direction.

In response to this a more centralised model may be favoured to “foster a more unified approach”. Achieving one centralised agency for environmental health as a whole would be difficult due to its interdisciplinary nature and the breadth of its realm. For effective application environmental health functions and concerns must be placed in a greater context which considers competing issues.

The alternative of one centralised agency for each aspect of environmental health (i.e. water, air or sanitation) would either create an artificial distinction that could not be maintained as an effective approach, or would result in a need for collaboration and networking between agencies not dissimilar to the current system.

This approach may have some merit in simplifying the network in some respects and clarifying the hierarchy between parties. Regardless of whether increased centralisation occurs, clarification (particularly of the interface between local and central government) would be beneficial. A stronger national leadership will provide focus and awareness on environmental health issues and encourage commonality in approach and simplifying of debate.

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1200 New Zealand Water and Wastes Association “Water Policy / Sustainable Management of New Zealand’s Fresh Water” New Zealand Water and Wastes Association <P:\NZWWA\Advocacy\Ratified policy docs\090227 final central leadership.doc> at 1.
1201 New Zealand Water and Wastes Association “Water Policy / Sustainable Management of New Zealand’s Fresh Water” New Zealand Water and Wastes Association <P:\NZWWA\Advocacy\Ratified policy docs\090227 final central leadership.doc> at 1.
1202 New Zealand Water and Wastes Association “Water Policy / Sustainable Management of New Zealand’s Fresh Water” New Zealand Water and Wastes Association <P:\NZWWA\Advocacy\Ratified policy docs\090227 final central leadership.doc> at 2.
However care must be taken that a need for consistency via a central authority is balanced with accommodating and supporting local democracy in decision making and the autonomy of local communities. The difficulty with a completely centralised approach is that it conflicts with a key principle of local democracy, that is, for local democracy to work “the power of decision-making should rest as close as possible to the community that those decisions affect”\footnote{New Zealand Water and Wastes Association “Water Policy / Sustainable Management of New Zealand’s Fresh Water” New Zealand Water and Wastes Association <P:\NZWWA\Advocacy\Ratified policy docs\090227 final central leadership.doc> at 5.}. Some of this criticism may be a regrettable but an inevitable side effect of allowing a system of localised democracy and the positive outcomes it introduces.

**Example - Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010**

The importance of local democracy was raised in 2010 when Parliament passed (by urgent session) the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (ECan Act). The ECan Act was to address central governments concerns about the slow progress of water consents in the region.\footnote{This issue is also discussed in chapter 9, Proposed Solutions and Reforms.} The Act replaced the elected regional council members with appointed commissioners effectively removing local democratic decision making (a fundamental focus for local government). Accordingly the passing of the ECan Act has been heavily criticised and is described by some legal scholars as a “constitutional affront”.\footnote{Phillip Joseph “Environment Canterbury Legislation” [2010] NZLJ 193 at 193.}

A basic rule of law is that it must be “prospective in operation”.\footnote{Phillip Joseph “Environment Canterbury Legislation” [2010] NZLJ 193 at 194.} In the ECan Act the decision making procedures are retrospective in regards to regional policy statements and regional plans.\footnote{Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 61.} There are further issues with the reduction of access to the courts which is “a fundamental precept of the rule of law and a right deeply ingrained in the common law”.\footnote{Phillip Joseph “Environment Canterbury Legislation” [2010] NZLJ 193 at 195.} Under the RMA, a party to a hearing may appeal the decision to the Environment Court. The Environment Court then hears the application “de
novo”, as in the case is heard as a “fresh” case and is uninhibited by any previous discussion in earlier proceedings.

The ECAn Act removes this access to the Environment Court in s 66(1) and instead provides for a right of appeal to the High Court “but only on a question of law”. This is a substantial reduction in appeal rights normally enjoyed in resource management law. Criticism based on the retrospective nature of the legislation, the reduced access to the courts and removal of local decision making has been the subject of much debate. However central government has continued to ignore “objectors” and on the 7th of September 2012 it reviewed the commissioner’s progress and renewed their term in control.

While the above example shows a negative approach by central government, centralised approaches can also be positive. In some respects it is not the number of interested parties that is an issue, but rather it is the connections and interactions between these groups and the flow of information and cooperation in strategy. It may be a matter of streamlining through central government producing national guidelines and revising legislation to ensure it is “workable and effective” and will result in consistency, while allowing localised approaches. However the real challenge is how to turn this rhetoric into practicality.

This arguably suggests a problem in the implementation of the current system rather than an inherent design flaw.

Example – Use of Sodium Monofluoroacetate (1080)

The use of the chemical 1080 in pest eradication, the range of controls which govern its use, and the controversy over its use due to concerns for human health make it a useful example of local government / central government tension and demonstrate the unnecessary complexity of the current fragmented framework.

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1209 Resource Management Act 1991, ss 276(1A), 290 and 290A.
1210 Chui v Minister of Immigration [1994] 2 NZLR 541; Leith v Auckland City Council [1995] NZRMA 400 (PT).
1211 Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 66(2).
The control and eradication of pests is carried out by DoC in accordance with its own operating procedures. As the process involves the use of toxins DoC must also meet Ministry of Health conditions before it can be issued a permit.\textsuperscript{1213} Local health authority approval is mandatory before aerial 1080 drops. In issuing the permit the Medical Officer of Health under the Ministry of Health will specify in their consent any “buffer zones” to be observed around waterways. While DoC carries out the operation, waterways within the buffer zone are monitored and compared to Ministry of Health drinking water standards.\textsuperscript{1214} This is carried out by a third party and provides an independent check on the safe use of the toxin.\textsuperscript{1215} These buffer zones may vary and depend on “the local Medical Officer of Health’s consent and the relevant regional council’s requirements”.

Regional councils and local authorities may require either resource consent or a certificate of compliance when an aerial drop of 1080 is contemplated.\textsuperscript{1216} The role of local authorities in issuing resource consents can vary considerably across different jurisdictions. This depends on how the individual council has decided to treat poisons under the Resource Management Act 1991.

In recent years groups in the local community have been pressuring their local authorities to stop the use of 1080 aerial drops. In 2009 the Taupo District Council passed a resolution on 1080 aerial drops in its jurisdiction stating:\textsuperscript{1217}

\begin{quote}
Resolution
That the Taupo District Council, in accordance with the section 10(b) of the Local Government Act 2002, advocate with central government and appropriate agencies, viz:
\begin{enumerate}
\item To develop a sustainable alternative possum eradication and trapping programme.
\item For the abolition of all aerial dropping of 1080 poison forthwith.
\end{enumerate}
\end{quote}

\textsuperscript{1217} The Taupo District Council Resolution.
Section 10(b) on the purpose of local government states:-

The purpose of local government is-

(a) to enable democratic local decision-making and action by, and on behalf of, communities; and

(b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

While the local council did not have the authority to ban the aerial drops, it relied on its purpose to represent the local community view that the drops should be stopped, and that this viewpoint should be acted upon on the grounds of democratic local decision-making.

Westland District Council also passed a resolution to ban 1080 aerial drops due to local community pressure. Mayor Maureen Pugh expressed similar sentiments to the Taupo District Council stating that “while we don’t have any legal authority to act on 1080, we do have an obligation to represent the community”. The council stated that it would work with DOC to find alternatives to 1080 use.

The Parliamentary Commissioner for the Environment provided a report on this conflict in June 2011 and called for simplifying of the regulations and the establishment of a standardised way of addressing 1080 usage to avoid regional variation. The Parliamentary Commissioner for the Environment suggested that establishing a NES on the subject would achieve this and reduce the variety of laws that govern the area and the variety of parties involved. However it is interesting to note that the introduction of a NES would effectively remove local government’s decision making power and the “voice” of local communities who are in opposition to 1080 use.

7.1.2 Faults in Implementation of the Current System

Issues in regards to the devolution of the current system need addressing. However even when these problems are addressed, there are further issues in implementation that

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1218 Mike Watson “Taupo Council Calls for 1080 Aerial Ban” The Dominion Post (New Zealand, 2nd October 2009).
1219 The purpose of local government has since been the subject of reform. See discussion in chapter 9, Proposed Solutions and Reforms.
will still cause problems. In some respects it is the failure of central government to utilise the tools it has (i.e. to set national standards, regulations and guidance) rather than the tools themselves causing issues.

Central government appears reluctant to be involved, leaving local government with much freedom and little statutory guidance. Only a handful of national policy statements and national environmental standards have been created since the implementation of the RMA. Central government does not appear to have fully explored its tools and the lack of action suggests the system may not be operating as originally envisioned. To date there is only one national policy statement and no national environmental standards were introduced until 2004. While some fault may lie within the system, with the national policy statement mechanism described as “cumbersome”, changes will not improve the current system unless central government becomes proactive. The establishment of the Environmental Protection Authority and its functions in national policy and standard setting may improve central government’s performance in this area.

If central government fulfilled their role with further national and regional standards and planning, these, when implemented alongside district plans, could result in “real improvements in efficiency, effectiveness and accountability in all areas of environmental health management”. However, care must be taken to ensure this does not result in another layer of superficial regulation.

For example, chapter 6, Environmental Health Functions of Local Government, contains a discussion about Clandestine Methamphetamine Laboratories (P labs) and the difficulties faced by local government in addressing the issue. The use of national

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regulations in this situation would provide mandatory consistency across jurisdictions as the current guidelines have been unable to fulfil this need. This area is a perfect area for national regulation as there is no localised variation or local interests that would be infringed by the area being centralised.  

7.1.3 Reasons for a split allocation of functions between Central Government and Local Government

In order to understand the split and discuss alternatives, the reason for the split and why central government may choose to delegate their powers must be examined.

Many factors influence the nature of this divide. Some theorists believe it is based on historical tradition or function efficiency (as described in Chapter 3 – The History of Environmental Health). Others believe that delegation of the power to regulate may be a result of “variation in interest group power at different levels of government”. So where areas are of intense interest to the local community, there is increased pressure to keep decision making localised to avoid the lack of influence and control in national decisions.

Delegation can also provide benefits where there is uncertainty. Delegation to local authorities can reduce the risk of a national standard which fails to address regional variation and avoid a loss of support for the centralised authority. The amount of national interest in an issue and competition at a local level also has an effect. Delegation can be used here as an “indirect means of limiting restrictive regulation or subsidies”.

While the split between local and central government in New Zealand appears influenced by a mixture of the above matters, other critics insist that:  

… government in New Zealand ha[s] never been blessed with any rational and coherent doctrine to guide the allocation of function between central and local arms.

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1227 See Chapter 6, Environmental Health Functions of Local Government, for more detail on this example.
1231 Graham Bush Local Government and Politics in New Zealand (George Allen and Unwin, Auckland, 1980) at 78.
In fact, there is “no clear demarcation between the role and functions of central government and the role and functions of local government”.1232 However in 2011, the government instigated a review of New Zealand’s constitutional provisions.1233 This investigation may provide clarity in this area and could lead to a formal recognition of the central government, local government relationship through principles, memorandums of understanding or via incorporation into statute. However work must begin on this relationship (prior to the outcome of the constitutional investigation) so that the efficiency and effectiveness of the current system can begin to improve (without waiting for a formal proposal).

7.1.4 Potential Solutions

Two main solutions become apparent when considering the split in responsibility and management of local government and central government. First, co-ordination and transparency between the parties could be improved. Further communication between parties could encourage a more integrated framework to emerge and avoid the overlap in approach and streamline resource use. The actual split may not be as problematic as how the parties handle the division in responsibility. The alternative option involves consolidation so environmental health functions are carried out by one central party. While solving any issue of overlap and jurisdictional control, this overlooks the value of a national direction, implemented with local adaptation. Both options merit further discussion.

7.1.5 The Effect of Existing Legislation on Local Government Control

Central government’s primary environmental health tools are located in the Health Act 1956 and the RMA. While central government can increase its influence by producing NES and NPS, the scope of its tools to create national change is “constrained by the fundamental design features”1234 of the RMA. In other words central government guidance is limited, not only by a lack of action, but because the RMA intentionally

1232 Kenneth Palmer (paper presented to the New Zealand Society of Local Government Managers Marlborough Retreat, Marlborough, 29 January 2011) at 1.
limits central government’s control.1235  For example, central government has no ability to override expressly local government decisions to allow or deny an activity. The “call-in” power only moves the decision to an “independent body rather than changing the criteria for the decision”.1236  This limits central government to producing legislation or setting standards which prescribe its desired outcomes, or strengthening guidance to local authorities on decision-making. Change in legislation involves time, cost and the need for consensus. Increased guidance may be a faster and more efficient mode of influencing local government (particularly where there is room for clarification).

Accordingly this leaves the current system with several options for reform. One option is to centralise the current system to decrease regional variation and ensure national uniformity. As discussed earlier, this does not guarantee an improved system. Complete consolidation is unrealistic given the multidisciplinary nature of environmental health. Increasing direct intervention at central government level is also contrary to local democracy.

Another option is to maintain the current system but increase the role of central government by actively using the tools that are currently available. This may be an effective solution when coupled with local consultation and cooperation (even though this is not mandated). However flaws in the system and restrictions on central government in utilising their tools should not be ignored.

Re-examination of existing legislation may be required if these restrictions are hindering central government in its ability to provide guidance. However the current system represents a “major investment” and a complete change in approach may overlook its many benefits.

An analysis of the environmental health framework and the needs for reform are discussed in further chapters of this thesis. Potential reforms, such as the Public Health Bill, are also addressed at that point.1237  However, it is interesting to note that central

1237 See Chapter 9, Proposed Solutions and Reforms.
The government has introduced the Public Health Bill with a view to addressing some of these concerns.

Upon the bill’s introduction to the House it was hailed as a welcome update of the 1956 Act which would “provide for an all-risks approach”1238 taking into account new threats. The bill would consider human rights and “diversify beyond traditional environmental health to encompass new environmental health issues”.1239

The bill aims to both centralise particular aspects of environmental health (i.e. re-allocating sewerage provisions to central government) and increase central government guidance by issuing voluntary codes of practice and guidance. Some debate remains as to whether this will actually increase complexity of the system rather than streamline it.

A main feature of the bill, which sets out “purpose, powers, functions and duties”1240 and organises the various levels of government into three levels - local, regional and national, is relevant to this chapter. This increased acknowledgement of the multi-level “whole-of-government” approach in legislation is intended to improve this system by providing formal recognition of the various levels of government involved and clarifying the roles they play.

In order to carry out their roles effectively, local government requires guidance from central government to identify central government approaches and determine their obligations. Although central government can be prescriptive in the establishment of local government and outline of powers, there are “no formal links between national and local government policy processes”.1241

While these linkages are weak in this respect they can be strengthened via increased communication between both levels. Forums between Ministers and local politicians allow for a cooperative approach to identifying interest areas. Increased involvement of central government in areas requiring specialised knowledge (such as food safety) demonstrates a useful mix with a centralised agency (New Zealand Food Safety

1238 Public Health Bill – First Reading (11 December 2007) 644 NZPD 13841.
1239 Public Health Bill – First Reading (11 December 2007) 644 NZPD 13841.
1240 Public Health Bill – First Reading (11 December 2007) 644 NZPD 13841.
Authority providing knowledge and tools for local authority implementation. A more prescriptive approach like this in other areas of environmental health may also clarify roles. However issues of limited local government resources and “conflicts between accountability and flexibility” in central government can also cause problems.

A potential solution to this problem (while not eliminating the split) may involve designing one set of rules at national level for local implementation. This could save time and cost while allowing for “joint development by central and local government” with contributions and planning taking place co-operatively.

7.1.6 Food Safety Example

In the food safety areas of environmental health the split between central government and local government has been seen as an advantage. In food safety, local government has enjoyed positive engagement with central government (the New Zealand Food Safety Authority – NZFSA). The Food Bill (introduced to Parliament in 2010 and currently awaiting its second reading) is expected to fully overhaul food safety and food regulation in New Zealand and provide a comprehensive framework based on a “fully risked-based regime”. To facilitate this template, food safety programmes will be introduced. This system is being trialled in stages by local authorities who are helping local food businesses practise implementing the new programmes.

Continued support from central government, and implementing the new programmes in stages gives local authorities the time and ability to come to terms with the impact of the new legislation prior to a complete change in regime. In turn, local authorities can communicate any issues to central government and provide practical feedback on how the system actually operates. This input provides feedback into the policy process.

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1242 The New Zealand Food Safety Authority is now part of the Ministry for Primary Industries.
1246 The New Zealand Food Safety Authority is now part of the Ministry for Primary Industries.
1247 Since the date of this thesis the Food Bill has been referred to the Primary Production Committee. The Primary Production Committee is due to report back to Parliament on the 6th of May 2014.

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and allows for adjustments to the Food Bill prior to it passing into legislation. The increased communication, co-ordination and transparency between parties should result in improved food safety legislation which holds the full support of both levels of government. While this may be a costly and time consuming process, if it results in an effective and efficient co-ordinated system, the benefits will outweigh the increased costs.

The above approach was also adopted in a recent review of liquor licensing legislation which allowed central government to develop legislation that will address implementation difficulties of local government, provide community input into licensing and address “drinking culture” problems. This resulted in the Sale and Supply of Alcohol Act 2012. These alcohol reforms have an important impact on local government as territorial authorities now have stronger powers to develop policies on the number of liquor outlets in their districts, and the location of these outlets.1250 Interestingly the government’s alcohol reforms (while starting after the Food Bill reforms) have already been passed into legislation while the Food Bill is still sitting on the Parliamentary list and is awaiting its second reading.1251 This is largely due to the “public popularity” of the two reforms. While many community groups have been pushing for alcohol reform to address addiction, drink driving and alcohol related crime the Food Bill has not met the same positive reception. Some members of the public are concerned with peripheral sections of the Food Bill which they perceive as restricting the growing and sharing of local produce.

The government’s approach to the Food Bill could be the first step towards formal statutory recognition of the principles governing the relationship between central and local government.1252 Previously, local government was subject to a statutory obligation to cooperate with central government in “Community Outcome Processes”, whereas central government was only encouraged by government policy and practice to cooperate (without a statutory obligation). In a welcome development, statutory

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1250 Sale and Supply of Alcohol Act 2012.
1251 The Food Bill was introduced to the house on the 26th of May 2010. It had its first reading on the 22nd of July 2010 and the Select Committee provided a report on the 16th of December 2010. Since this date the bill has awaited its second reading in Parliament.
obligations are placed on both central and local government under cl 13 (italics added):—

13. Principles governing relationships between Minister, chief executive, and
territorial authorities

In achieving the purpose of this Act, the Minister, the chief executive, and all
territorial authorities must take into account the following principles:

(a) the need to develop and maintain productive working relationships and
enhanced co-operation among themselves; and

(b) the need for a co-ordinated and aligned approach among themselves in
fulfilling their respective roles and responsibilities under the act.

This puts central and local government in the position of considering their relationship
and coordination when operating under the Act, however the choice of wording by
central government is interesting. The phrase “must take into account the following
principles” expresses a mandatory duty, however, phrasing the principles as “the need
to develop and maintain” and “the need for a co-ordinated and aligned approach” infers
a discretion or value judgement as to how great the need is and as to whether the need is
being met. It also suggests that there may be other competing values that could
outweigh the need.

Clause 14 of the Bill which outlines “the principles to be applied in performing
functions or duties, or exercising powers”1254 of the Act states (italics added):—1255

In performing functions or duties or exercising powers, under this Act…the
minister, the chief executive, and all territorial authorities must take into account
the following principles to the extent that they are relevant to those functions,
duties, or powers:

(a) the need to achieve the safety and suitability of food:

…

(c) the importance of providing services in a co-ordinated and coherent
manner as far as practicable.

A positive obligation to coordinate with local government is contained in cl 14(e) but
Parliament has again been cautious in its wording of the section. While the principles
of coordination “must be taken into account” this is only to the “extent that they are

relevant” inferring a discretion on parties in exercising their duties under the Act. Clause 14(e) refers to “the importance of coordination as far as practicable” and this has yet to be tested to see if it acknowledges that full coordination may not always be possible, or if it actually provides an opportunity for central government to side step its duty to cooperate.

The Food Bill is currently awaiting its second reading following a report from the Primary Production Committee that left cls 13 and 14 intact.1256

Regardless of the above criticisms, it is the first time that central government has been given a statutory obligation to coordinate with local government and it will be interesting to see if this trend will extend into further legislation as a similar clause has not been included in other recent environmental health legislation.1257

It is important to note that the new food bill offers statutory clarity on a “coordination relationship” between central and local government but does not suggest an equal “partnership” between the parties.

The issue of a partnership relationship between central and local government relates back to the review of local government leading to the Local Government Act 2002. The fourth objective of the review referred to a “partnership relationship” between central and local government1258 to allow them to work together for the well-being of the community. However, this did not suggest a change in constitutional position for local government with the Department of Internal Affairs confirming that :-1259

“…the roles, responsibilities, powers and accountabilities of local government will continue to be defined in legislation and enacted by Parliament. The provisions of the legislation will continue to define both the powers of local authorities, and the powers of Ministers in relation to local government.”

This suggested that central government intended a change in relationship, as in how they worked together and cooperated, but confirmed that local government were

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1256 Food Bill 2010 (160-2), Commentary, as reported from the Primary Production Committee.
1257 Such as the Waste Minimisation Act 2008, the Public Health Bill or the Resource Management Act reforms.
‘creatures of statute’ and while local government was not accountable to central government it had an obligation to comply with the law (giving central government the ability to direct national priority and override the will of local government through statute).

The resulting Local Government Bill 2001 reduced the partnership concept to an idea of cooperation, where local government was required to “work co-operatively and collaboratively with other public bodies and private concerns with common interests in advancing community goals”.\(^{1260}\) This suggests that central government’s main intention was not to create a partnership (which infers equality) but to improve the links in the relationship between the parties for greater coordination (without a formal relationship enforced by statute).

In the absence of an accepted set of “relationship principles” being initiated in local government reform the Food Bill is a unique development in clearly outlining coordinating roles between the Minister, chief executive and territorial authorities. The level of clarity suggests a welcome change in drafting environmental health legislation which clarifies the environmental health framework.

### 7.1.7 Coordination of Central and Local Government under the Food Bill

The roles of the Minister, chief executive and territorial authorities are outlined in cls 15, 16 and 17. The Minister’s role includes issuing “national outcomes”\(^{1261}\) for territorial authority performance (and establishing measures to monitor performance and achievement of outcomes),\(^{1262}\) recommending regulations which impose national programmes\(^{1263}\) and adopting and issuing food standards. Accordingly central government maintains control through national direction, however there is a degree of consultation with local government on the creation of national outcomes under cl 148(2)(b).

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\(^{1261}\) Food Bill 2010 (160-2), cl 15(2)(a).  
\(^{1262}\) Food Bill 2010 (160-2), cl 148(1)(a).  
\(^{1263}\) Food Bill 2010 (160-2), cl 15(2)(a)(iii).
The chief executive’s role includes “providing advice to territorial authorities on the performance of their functions and duties, or the exercise of their powers”\(^{1264}\) to achieve the Act’s purpose. This is an innovative approach that allows for direct interaction between territorial authorities and central government. While not related to a “partnership” this definitely reflects a deeper level of communication between the parties. However there is a danger that this will be one sided as the clause falls short of a statutory duty on the chief executive to consult with a territorial authority and discuss issues that may affect its performance in order to give meaningful advice. Clause 16(2)(k) does state that the chief executive’s role includes “working collaboratively with territorial authorities and other regulatory bodies”\(^{1265}\) but this is in regards to “monitoring and implementing the enforcement system” under the Act.\(^{1266}\) Again, national direction is provided for under cl 16(2)(f) as the chief executive can establish and monitor “national outcomes, performance criteria, standards, and other requirements that must be met by territorial authorities”.

This hierarchy approach is reinforced in cl 17 which outlines the role of territorial authorities. Clause 17(2)(b) states the territorial authority role includes “facilitating the administration and performance of functions and activities that support the role of the chief executive under this Act”.\(^{1267}\) Territorial authorities can also be directed by the chief executive to investigate complaints of non-compliance with national programmes or “any other matters”.\(^{1268}\)

Review provisions under the Bill also establish a clear hierarchy as the chief executive can review decisions of territorial authorities\(^{1269}\) and in turn the chief executive’s decisions can be reviewed by the Minister.\(^{1270}\) Under reporting provisions territorial authorities must report and supply information to the chief executive\(^{1271}\).

Upon consulting the Minister of Local Government, the Minister can issue a review of a territorial authority’s performance.\(^{1272}\) While the Minister determines the terms of

\(^{1264}\) Food Bill 2010 (160-2), cl 16(1)(2)(a).
\(^{1265}\) Food Bill 2010 (160-2), cl 16(2)(k).
\(^{1266}\) Food Bill 2010 (160-2), cl 16(2)(k).
\(^{1267}\) Food Bill 2010 (160-2), cl 17(2)(b).
\(^{1268}\) Food Bill 2010 (160-2), cl 146(2)(e).
\(^{1269}\) Food Bill 2010 (160-2), cl 16(2)(m).
\(^{1270}\) Food Bill 2010 (160-2), cl 15(2)(e).
\(^{1271}\) Food Bill 2010 (160-2), cl 157.
\(^{1272}\) Food Bill 2010 (160-2), cl 158.
reference for the review under cl 159(1) this is subject to cl 160 that states the Minister must consult with the territorial authority in question about the terms of reference and must take their representations into account. This provides a statutory obligation on central government that supports the idea of local government having input into its carrying out of its role under the Act. It may provide local government with the opportunity to point out shortfalls in the system and provide useful opportunities to review the legislation.

For example, under cl 147, a territorial authority has a statutory duty where it “must ensure it has adequate resources and capability to carry out its role, functions and duties and to exercise its powers under this Act”. While this makes sense in that territorial authorities will be responsible for resource budgeting and allocation, its ability to have adequate resources may be constrained by factors outside of its control, including limits enforced by central government. If a territorial authority was reviewed on its performance in regards to the provision of resources, these issues in resource scarcity and lack of funding could be raised by the territorial authority under cl 160(1)(b) and the Minister would have a statutory duty to take these points into account in assessing the territorial authority’s performance. This would be likely to lead to this issue being addressed. This example outlines a positive shift in the local government / central government relationship by providing for communication between both levels of government and ensuring that concerns of local government are taken into account (even though it is at the review stage, rather than at the planning and strategy stage which may be more useful).

Once a review is completed there is a comprehensive report back system that reinforces the importance of local government input. The reviewer (appointed by the Minister) must give a copy of the draft review to the chief executive and territorial authority, allow time for submissions and must take these submissions into account prior to submitting the report to the Minister. The Minister then considers the review, and in the case of non-performance by the territorial authority, can appoint “the chief

1273 Food Bill 2010 (160-2), cl 160(1)(a).
1274 Food Bill 2010 (160-2), cl 160(1)(b).
1275 Food Bill 2010 (160-2), cl 147(a).
1276 Food Bill 2010 (160-2), cl 164(1)(b).
1277 Food Bill 2010 (160-2), cl 164(1)(c).
1278 Food Bill 2010 (160-2), cl 164(1)(d).
1279 Food Bill 2010 (160-2), cl 165(1).
executive, another territorial authority, a regional council, or a recognised agency” to carry out the territorial authority’s “functions, duties and powers” under the Act (with the non-performing territorial authority liable for costs).

Consultation at local government level is not a new concept, so why has the local government / central government split worked so well in food safety but not in other areas of environmental health? There may be several reasons for this. First, food safety may be a unique area of environmental health in that there is no obvious source of tension between local government and central government in carrying out environmental health functions. The area is historically highly centralised through the NZFSA who provide clear national guidance and education. Legislation is precise and detailed. There is no clear competing interest between central and local government in implementing food safety and with little regional variation needed in approach (except for acknowledgement of cultural / regional variance in food sources and practices) there is no pressure from local communities for a flexible, locally tailored approach.

Secondly, it may also be that food safety is not a controversial area as positive effects manifest both locally and nationally as opposed to situations where positive effects manifest nationally with adverse effects manifesting at a local level. For example, water quality may be nationally accepted as requiring regulation, however conflict arises through competing interests. Satisfying national interests may require a decrease in water use to preserve national drinking water supplies while satisfying local community interests may result in increased pressure on local authorities to approve increased water use for farming irrigation and local economic gain.

Recent suggested changes in central government management have raised some concern at local government level. In March 2010 the Government met to discuss reducing the number of government ministries and suggested amalgamating the NZFSA with the Ministry of Agriculture and Forestry (MAF). This change was criticised at local government level for reducing the separation of interests between the NZFSA and MAF which was a key motivation for the original establishment of the NZFSA. However this amalgamation was implemented in March 2012 with the development of

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1280 Food Bill 2010 (160-2), cl 165(1).
1281 Food Bill 2010 (160-2), cl 165(1).
1282 Food Bill 2010 (160-2), cl 169.
1283 NZIEH Annual General Meeting 2010 and submissions.
a new government Ministry, the Ministry of Primary Industries (MPI). The MPI absorbed the NZFSA, while MAF was abolished.

Despite any unique attributes that food safety may enjoy, the increased co-ordination and transparency between parties could be aimed for in other areas of environmental health to improve policy and implementation.

7.1.8 Department of Internal Affairs (DIA) Local Government / Central Government Interface Project

The Food Safety example reflects that the importance of a strong “central government / local government interface” is now being recognised by central government. The Department of Internal Affairs (DIA) has the role of facilitating local government / central government co-ordination in regards to the Community Outcomes Process. Improving the interface through increased co-ordination provides a clear advantage over consolidation at central government level as it preserves local democracy and encourages local community participation.

In 2004 a cabinet policy committee paper titled “Central Government Engagement in Community Outcome Processes” was produced. The committee paper encouraged central government engagement with local authorities. This would enable local government to carry out its role under the Local Government Act 2002 (LGA) by identifying “the social, economic, environmental and cultural outcomes [communities] want for community well-being”. In providing this, local authorities had a role in co-ordinating interested parties (including central government) to identify “community outcomes”. While the LGA places no requirement on central government to participate in the process, the partnering between local and central government aids central government in policy development while pursuing “mutually desired outcomes”.

1285 Department of Internal Affairs Central Government Engagement in Community Outcome Processes (Cabinet Policy Paper, 2004).
1286 Department of Internal Affairs Central Government Engagement in Community Outcome Processes (Cabinet Policy Paper, 2004) at 1.
1287 Department of Internal Affairs Central Government Engagement in Community Outcome Processes (Cabinet Policy Paper, 2004) at 1.
1288 Department of Internal Affairs Principal Report Evaluating the Department of Internal Affairs Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007).
While some level of co-ordination was already evident, the 2004 paper concluded that three specific problems required attention so that local government / central government co-ordination could improve. First, a lack of consistent communication from central government, secondly a lack of procedures at central government level to respond to local government enquiries and thirdly a lack of knowledge at an individual staff level.

Addressing these issues and improving the central government / local government interface and increasing central government participation in community outcome processes could potentially reduce local tensions (aimed at national initiatives) as central government will be more aware of local interests and can improve policy to reflect this.

This could reduce cost and increase efficiency with:

- more efficient use of public resource through greater co-ordination, streamlined information flows, improved communication between departments (and) avoidance of duplication.

These positive attributes of engaging local and central government are clearly reflected when considering environmental health functions. Aligning the processes of local and central government, identifying common interests and co-ordinating, directly addresses the key criticisms of the local government / central government split discussed during this chapter.

These issues resulted in the DIA preparing “Policy Development Guidelines for Regulatory Functions involving Local Government”\(^{1291}\). These were expected to “prompt and assist central government agencies to identify and consider key issues that may arise where local authorities are…involved in the implementation of regulatory functions”,\(^{1292}\) This acknowledged the relationship between both levels of government

\(^{1289}\) Department of Internal Affairs *Central Government Engagement in Community Outcome Processes* (Cabinet Policy Paper, 2004) at 3. Also see Department of Internal Affairs *Principal Report Evaluating the Department of Internal Affairs Facilitation of the Central / Local Government Interface in the Community Outcomes Process* (Department of Internal Affairs, Wellington, 2007) at 19 for further discussion.

\(^{1290}\) Department of Internal Affairs & Megan Courtney *Putting Pen to Paper* (Department of Internal Affairs, Wellington, 2006).

\(^{1291}\) Department of Internal Affairs *Policy Development Guidelines for Regulatory Functions involving Local Government* (Department of Internal Affairs, Wellington, 2006).

\(^{1292}\) Department of Internal Affairs *Policy Development Guidelines for Regulatory Functions involving Local Government* (Department of Internal Affairs, Wellington, 2006).
and the importance of “effective and responsive local governance” in improving “social, economic, environmental and cultural well-being”. 1293

The policy guidelines expressly acknowledged many of the causes of tension in the local government / central government relationship. For example the guidelines recognised the local pressure experienced by local authorities who are directly responsible to their local communities. To avoid tension arising between this, and a local authority’s role in implementing national policies, the guidelines assert that if the tension is “explicitly and transparently identified and recognised in the design of central government policy”1294 it can be managed. Similarly the “statutory decision-making, consultation and accountability”1295 requirements of local government (together with the unique roles of regional councils and territorial authorities) should be acknowledged by central government during policy development.

Funding of initiatives (particularly those with perceived national rather than localised benefits) often cause local tension. This is also addressed by requiring central government to consider funding impacts on local government to ensure that those who benefit from an initiative (i.e. ratepayer or taxpayer) also pay for the cost of the initiative.

The DIA recommendations in March 20071296 and principal report in April 20071297 reflected on the DIA’s interface project (including guidelines) and its perceived effectiveness. Central government received a mixed review with the level of engagement with local government differing depending on “differing perspectives of relevance of community outcomes to their core business”. 1298

1293 Department of Internal Affairs Policy Development Guidelines for Regulatory Functions involving Local Government (Department of Internal Affairs, Wellington, 2006).
1294 Department of Internal Affairs Policy Development Guidelines for Regulatory Functions involving Local Government (Department of Internal Affairs, Wellington, 2006) at 1.
1295 Department of Internal Affairs Policy Development Guidelines for Regulatory Functions involving Local Government (Department of Internal Affairs, Wellington, 2006) at 1.
1296 Department of Internal Affairs Recommendations Evaluating the Department of Internal Affairs’ Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007).
1297 Department of Internal Affairs Recommendations Evaluating the Department of Internal Affairs’ Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007).
1298 Department of Internal Affairs Recommendations Evaluating the Department of Internal Affairs’ Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007) at 40.
Interestingly, parties were often not fully aware of each other’s roles and responsibilities (as expected in the guidelines) which hindered performance.1299

In the 18 months prior to the Principal Report the feedback from central and local government participants reflected an increase in central government acknowledging their role in community outcome processes and “seeking mutually beneficial opportunities”1300 for local government and central government to engage in. For example, Rangitikei District Council connected with central government through forums in Marton and Wellington to allow them to share their community outcome processes with central government.

However there remains a continued need for the DIA to assist in connecting parties, creating relevance between parties, facilitating contact and promoting good practice.

While the relationship between local government and central government in carrying out environmental health functions is optimal it is debateable if this has actually been achieved or if local government / central government are in a stage of co-existence, networking, co-operation, collaboration or partnership.1301

The DIA’s interface project (together with the division of functions under the Health Act 1956, the RMA and LGA) suggest the relationship has gone beyond networking but that elements of the partnership are still unclear. While central government has taken steps to improve the nature of the local government / central government relationship, more is required to develop a strong partnership and address the tensions in the split. For example, the “Strengthening Communities through Local Partnership Research Project” suggests that central government “develop stronger imperatives”1302 to develop locally and aim towards a decentralised, devolved framework to achieve central government shared objectives with local government. As to whether this approach is the most desirable is still under debate.

1299 Department of Internal Affairs Recommendations Evaluating the Department of Internal Affairs’ Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007).
1300 Department of Internal Affairs Recommendations Evaluating the Department of Internal Affairs’ Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007) at 48.
1301 David Craig & Megan Courtney The Potential for Partnership (Waitakere City Council, Waitakere, 2004) at 38.
1302 Local Partnerships and Governance Research Group Balancing Means and Ends: Key Messages for Central Government from the “Strengthening Communities through Local Partnerships” Research Project (Local Partnerships and Governance Research Group, New Zealand, 2005) at 8.
This discussion demonstrates that there is a lack of statutory obligation on central government to engage with local government. A duty on local government to collaborate with central government will only work if central government has a duty to respond. Recent developments in this area appear to focus on these issues. For example the Auckland Council (under the Local Government (Auckland Council) Act 2009) has a mandatory obligation to engage with central government and other affected persons in preparing and administering the Auckland Plan. Following this the Local Government Act 2002 Amendment Act 2012 inserted a new part 10, increasing the powers of the Minister to appoint an observer or give directions to councils as to performance, or appoint a commissioner to take over. However there is a statutory obligation for the Minister to first discuss the problems with the council (leading to an engagement in dialogue between the two parties). The Local Government Act 2002 also provides for the Local Government Commission to report to the Minister about local government and the Minister may refer any matter to the Local Government Commission for consideration. The Act also provides for the Local Government Commission to review the operation of the Act and report to the Minister. These powers provide a bridge between the central government and local government. Local Government New Zealand (LGNZ) is also active in talking with the DIA who are actively involved in facilitating the local government / central government interface.

7.1.9 Local Government Act 2002 Amendment Act 2010

This increase in national direction is reflected in s 291A of the Local Government Act 2002 Amendment Act 2010 which received royal assent on the 26th of November 2010. The bill aimed to “…improve transparency, accountability and financial management in local government”. This is reflected in the identification of “core services” as a key performance role and the establishment of specific performance measures which are included in a local authority’s long-term plan. Clause 261B requires the Secretary for Local Government to “make rules specifying performance measures” for five areas, most of which are environmental health matters – “water supply, sewerage and the

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1304 Local Government Act 2002, s 31.
1305 Local Government Act 2002, s 31(3).
1306 Local Government Act 2002, s 32.
1308 Local Government Act 2002 Amendment Bill 2010 (142-1), cl 5 (s 11A).
1309 Local Government Act 2002 Amendment Bill 2010 (142-1), cl 261B(1).
treatment and disposal of sewerage, stormwater drainage, flood protection and control works and the provision of roads and footpaths”.

This would suggest an increase in national guidance and direction which would provide nationally comparative data for use in national policy development. However this intention is not mentioned in the purpose of the finished Act.

The development of these measures has been highly criticised at local government level. A submission from the Auckland Regional Council called the standard performance measures “completely inappropriate” and a “bureaucratic nightmare”. Local government independence was seen to be threatened:

…local government is not part of a central government, not a sort of government department, and nor is it funded by central government taxes. Local government exists in a democratic, pluralistic society to allow local communities of ratepayers to have some independence and autonomy…The application of standard performance measures will reduce local democracy by applying a rigid bureaucratic, formulaic, one-size-fits-all template to decision-making rather than allowing for local autonomy.

The Auckland Regional Council also questioned the ability for specific performance measures to be appropriate over all local authorities given differences in population, land mass and resources.

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1310 Local Government Act 2002 Amendment Bill 2010 (142-1), Commentary, at 5.
The select committee confirmed the importance of performance measures being applied to all local authorities but clarified that the purpose was to allow the public to compare the level of service provided between different local authorities. This clarification of the purpose was inserted in s 291A of the Act.

Concerns about central government encroachment were addressed by the Minister for Local Government, who (in confirming the purpose of the measures was to allow for comparison) stated:

This is not a ploy for central government to tell local government what level of service to provide, each council will still determine its performance targets…the result should be a simple set of measures that informs rate payers.

Accordingly the performance measures will not provide a national standardization of the five key activities. The rules may specify performance measures but each local authority will still be responsible for determining their own performance targets. Rules will be based on allowing public comparison rather than a standardised approach. However this will assist central government in collecting a standardised output from each local authority on water and sewerage which could be used to monitor service and improve strategies and operational planning.

7.1.10 Benefits of Standard Performance Measures

The role of local government is further preserved by an obligation for the Secretary to consult every local authority in making a rule. This increased level of consultation between local and central government reflects trends resulting from increased local government participation in central government planning. It also preserves public participation and acknowledges the rate payer / local community connection to local government. Results are aimed at the taxpayer which will lead to an informed public, increased awareness and participation and will encourage ratepayer pressure on local authorities to improve performance upon comparison. This will tend to lead to an alignment in local authority approaches or standards which could aid in carving out a national direction.

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1316 Local Government Act 2002 Amendment Bill 2010 (142-1), Commentary, at 5.
1318 Local Government Act 2002 Amendment Bill 2010 (142-1), s 261B.
Compulsory consultation with local authorities when the rules are created will improve central government / local government communication and will allow weaknesses to be identified and addressed (i.e. inadequate resources, poor practice, lack of centralised guidance).

While further national guidance and direction may have been expected with set minimal standards and checks, this power is already provided to central government via NES and NPS functions. Unlike NES and NPS (which are made at the discretion of central government) there is a positive duty to create these rules under cl 261B where “the Secretary must, as soon as reasonably practicable, make rules”.

Interestingly the standard performance measurements will allow for some national consistency by allowing the incorporation of documents into rules. These include “standards, requirements or recommended practices of international or national organisations” or “standards, requirements or recommended practices prescribed in any country or jurisdiction”.

Accordingly this increases the likelihood of national uniformity and ensures inter-jurisdictional comparison. While the rules will not ensure a minimum standard of behaviour or ensure that certain methods or procedures are adopted in practice, by requiring local authorities to measure themselves against a comparable standard it may inadvertently influence the way local government regulate and carry out their role.

For example, under the Health (Drinking Water) Amendment Act 2007 drinking water suppliers (of more than 500 people) were required to develop and implement a public health risk management plan before 2013. This tool is aimed at helping suppliers “identify, manage and minimise events that could cause drinking water quality to deteriorate.”

Water supply quality is controlled by drinking water standards for New Zealand (DWSNZ) which set maximum allowable concentration levels of contamination and contamination.
compliance criteria. This provides a two stage quality assurance and further provides criteria for monitoring drinking water quality to allow for consistency. The duty on drinking water suppliers to monitor drinking water is stated in s 69A(2)(c)(i).

Section 69O provides the Minister with the authority to “issue, adopt, amend or revoke drinking water standards” and while consultation is required under s 69P, no direct requirement to consult local government is outlined (in contrast to s 261B(3)(a)).

Accordingly, the Secretary for Local Government could create a rule specifying performance measures in relation to water supply that would be applicable to all local authorities, which, under s 261(1) could incorporate the Drinking Water Standards for New Zealand into the rule. This would then create a positive obligation on local authorities (regardless of whether they were also drinking water suppliers) to measure drinking water performance. Local authorities may be required to provide internationally comparable performance measure data if international standards, required or recommended practice were incorporated into the rule.

Comparison of the results may highlight weaknesses in performance and implementation by local government, drinking water suppliers or both. While these measures only provide comparative value (without a positive obligation to improve performance), they may encourage local authorities to change practices to improve their comparative results. This would also allow central government to identify potential weaknesses and pinpoint compliance issues and policy development opportunities.

1329 Health Act 1956, s 69O.
7.2. ISSUES IN CENTRAL GOVERNMENT AND LOCAL GOVERNMENT ENVIRONMENTAL HEALTH MANAGEMENT

7.2.1 Providing a regulatory framework with clear national direction

In order to provide an effective and efficient framework, environmental health legislation must provide clear direction, power to act, ability for discretion, accountability and review provisions, a balance of important considerations and clear implementation provisions.

New Zealand’s environmental health system relies on a network of statutes to provide for environmental health management. These include a series of core statutes including the Resource Management Act 1991 (RMA), Local Government Act 2002 (LGA), New Zealand Public Health and Disability Act 2000 (NZPHDA) and Health Act 1956. Many other statutes also touch on aspects of environmental health matters. Accordingly over sixty different statutes are used to provide for environmental health in New Zealand. Coordination over these statutes is possible, as local authorities are responsible for the implementation of most environmental health functions. The LGA is a valuable statute that clearly lays out the purpose, functions and powers for local authorities and the framework they work in. The presence of the LGA means that new legislation can make direct references to local government’s role (referring to the parameters of the LGA or RMA). This allows for the insertion of duties, consent functions, or bylaw making powers (without first having to establish the role of local government).

It is the core statutes (mentioned above) that provide the basic requirements for a regulatory framework. These core statutes combine to provide government direction, primarily through the Ministry of Health (via National Health Strategies, health targets and letters of direction to District Health Boards (DHBs)) and through the Ministry for the Environment (via the use of national instruments such as National Environmental Standards (NES) and National Policy Statements (NPS)).

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1331 See the list of environmental health acts (and brief discussion of their connection to environmental health) in the appendices of this thesis.
This national direction is implemented at local government level through the hierarchy of environment planning documents which requires regional plans to be consistent with NES and NPS and district plans to be consistent with NES, NPS and regional plans. The hierarchy of health planning documents requires DHB plans to be consistent with national health strategies and ministerial directions.\footnote{1333 The hierarchy of planning documents is discussed in chapter 5, \textit{Environmental Health Functions of Central Government.}}

On the surface, these provisions provide adequate opportunity for national direction through the regulatory framework. The health planning system appears particularly effective and is simpler than the environmental planning system. This is due to increased central government input, with the involvement of the National Health Board, (in regional planning) and the requirement that the Minister check each DHB plan to ensure its consistency with national direction prior to sign off.\footnote{1334 New Zealand Public Health and Disability Act 2000, s 38(4).}

In comparison environmental planning is more problematic due to a lack of national direction, and issues with providing quality planning at local government level. Central government appears reluctant to utilise its NES tools and accordingly only a handful of standards have been produced.\footnote{1335 National Environmental Standards are discussed in chapter 5, \textit{Environmental Health Functions of Central Government.}}

Reforms in this area could include a positive obligation on the Minister for the Environment to provide national direction, like the mandatory obligation on the Minister of Health to provide a national health strategy. However it is important to identify that national direction via policy (such as a national health strategy), is different to national direction via NES which will require strict observance, and remove any opportunity for input at local government level.

When providing national direction, a balance must be struck to ensure that local government has a clear indication of the intentions of central government, and has the flexibility to tailor planning to the local community. This preserves the fundamental principle of local democratic decision making.

Central government’s other national direction tools include policies, targets, or guidelines. While “softer” than the regulatory force of a NES, care must be taken to

\footnote{1333 The hierarchy of planning documents is discussed in chapter 5, \textit{Environmental Health Functions of Central Government.} \footnote{1334 New Zealand Public Health and Disability Act 2000, s 38(4).} \footnote{1335 National Environmental Standards are discussed in chapter 5, \textit{Environmental Health Functions of Central Government.}}}
ensure clear discernible instructions are provided with these tools, otherwise the local authority may struggle to turn this positive rhetoric into a practical reality.

Accordingly reform in this area should be based on the understanding that a varying level of central government intervention may be required, depending on the situation. Where matters have a purely localised impact, it would be acceptable for local government to provide planning. In other situations, national guidelines may provide the necessary assistance to local government to allow them to structure their initiatives, and create a plan which reflects national consistency. Finally, there may be some situations where the balance for national consistency outweighs the interest in local decision making, and in these situations, strong national guidance, such as NES may be required.

For example, chapter 5 discussed the creation of the Resource Management (National Environmental Standard for Air Quality) Regulations 2004, which resulted from the failure of the national “Ambient Air Quality Guidelines” to adequately provide a national application. Chapter 6 discussed the environmental health issues resulting from methamphetamine laboratories, and the current difficulties with the national guideline approach. These areas can both be nationally regulated. There is no differing local interest that needs to be taken into account on this issue, and the severe nature of the environmental health harm, weighs in favour of national regulation.

Accordingly reform in this area should establish a set process for the establishment of NES under the RMA. This could require the Minister to consider if the matter is best regulated through national guidelines or NES depending on the balance of interests discussed above. Local government should have the ability to suggest areas for NES consideration. If the Minister determines that NES are not appropriate, he or she could then consult with local government to determine other national direction tools which may provide adequate assistance in the situation (such as the use of national guidelines).

Accordingly the power to use NES remains squarely with central government, but there is an increase in dialogue between central and local government, to determine which party is best charged with creating regulation for the area.
The drafting of the Food Bill (discussed in chapter 6), is a positive example of how increased consultation (between central and local government) can produce a national piece of legislation, which is supported by both tiers of government. The continual opportunity for local government to provide input (including giving feedback on trials of the system), shows how national direction can be achieved, while respecting local democracy, and the role local government could play in implementing the Bill.

In regards to plan “quality” varying between local authorities, the National Health Board has successfully addressed this issue by providing an “annual tool kit” with guidelines and health target definitions to assist DHBs in planning. This same approach could be adopted for local authorities. Central government has already made positive steps towards achieving this by providing for the Ministry for the Environment to be more actively involved in planning guidance. The provision of planning tool kits and templates would complement the Ministry’s role as an independent policy advisor (following the delegation of decision making functions to the EPA).

### 7.2.2 Providing for inter-sectoral coordination

This issue has been addressed in Chapter 6, when assessing coordination between central and local government and coordination between DHBs, territorial authorities and regional councils.

It has been acknowledged throughout this thesis that the ad hoc development of the area has led to a plethora of parties being involved in environmental health management. Lack of coordination between these parties poses a major problem for environmental health management. Earlier attempts to coordinate parties have involved the use of objectives and policies (such as the New Zealand Health Strategy), and interface projects aimed at increasing local government / central government engagement. While local government demonstrated a willingness to participate in the interface

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1338 Environmental Protection Authority Act 2011.
1339 See Central Government & Local Government Environmental Health Flowchart on the first page of the appendices of this thesis.
1340 Department of Internal Affairs Central Government Engagement in Community Outcome Processes (Cabinet Policy Paper, 2004); Department of Internal Affairs Principal Report Evaluating the Department of Internal Affairs
these approaches have been limited in their success, due to a lack of statutory incentive for central government to actively participate.

Discussions in chapters 5 and 6, both concluded that complete consolidation or amalgamation of environmental health functions into one centralised body will not provide the required clarity or efficiency. Parliament appears in agreement with this conclusion and has also demonstrated an interest in increasing coordination and links between parties rather than pursuing amalgamation.1342

Parliament’s recent initiatives in this area are mainly focused on statutory provisions aimed at local government. These include the introduction of regional service planning1343 to improve collaboration amongst DHBs, the use of joint or multi-lateral agreements,1344 and provisions creating a mandatory obligation for Auckland Council to engage with central government, and other affected persons, in preparing and administering the Auckland Plan.1345 While this increases coordination, the provisions fail to provide the incentive for central government, to collaborate actively with local government.

The issue is gradually being addressed with provisions aimed at providing a bridge between central government and local government. For example the Local Government Act 2002 Amendment Act 2012, increases the power for the Minister to appoint statutory observers, but inserts a statutory obligation on the Minister to discuss the problem with local government first (increasing the opportunity for dialogue).

Reform in this area could encourage the use of health impact assessment (HIA) for policy development. Suggested processes for this were discussed in chapter 6.

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1341 Department of Internal Affairs Principal Report Evaluating the Department of Internal Affairs Facilitation of the Central / Local Government Interface in the Community Outcomes Process (Department of Internal Affairs, Wellington, 2007).
1342 See discussion on DHB amalgamation and collaboration in chapter 6, Environmental Health Functions of Local Government.
1343 Ministry of Health Regional Service Planning: How district health boards are working together to deliver better health services (Ministry of Health, Wellington, 2012).
7.2.3 Central government parties who are under-utilised

The Parliamentary Commissioner for the Environment (PCE) (discussed in chapter 5) has an important role in providing information on environmental issues and making recommendations to both central and local government as an independent watchdog. Unfortunately the PCE is hindered in their ability to extend their investigations by a low level of central government funding. An increase in funding for the PCE will undoubtedly result in more reporting, which could benefit environmental health understanding.

The effectiveness of the Environment Protection Authority (EPA), has also drawn criticism from parties who were disappointed that the power of the EPA, and the significance of its impact, had been curbed by its size and funding. While the low level of funding, and the restriction on using consultants, may be been to keep the EPA efficient and streamlined, there is a danger that it will fail to have any real impact in the area.

However these concerns are now being addressed by Parliament who have started to expand the EPA’s role with new functions, including preparing regulations and administering the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, and acting as a consent authority for marine consents.

7.2.4 Providing up-to-date tools for Local Government

In environmental health management in New Zealand, central government provides direction and regulation, while local government provides implementation. This can be achieved through specific provisions in legislation, or through the creation of rules or bylaws. Rules included in local authority plans are revised each time the plan is renewed. Similarly local authorities are required by statute to review bylaws (under the LGA) after 5 years, and then after every 10 years. This provides local government with the statutory requirement to renew their enforcement “tools”, and

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1346 See discussion in chapter 5, Environmental Health Functions of Central Government.
1347 This Act comes into force in June 2013 after the date of this thesis.
1348 Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, s 13(1)(a).
1349 These concepts are discussed further in chapter 6, Environmental Health Functions of Local Government.
1350 Local Government Act 2002, s 158.
1351 Local Government Act 2002, s 159.
ensure they are “fit for purpose” to carry out their requirements under the respective statute.

In contrast, some of the tools provided in statute are outdated and outmoded. Examples of this situation were discussed in chapter 6. These include environmental health officer’s nuisance orders, cleansing orders and closing orders.\textsuperscript{1352} The archaic language limits the interpretation of the current powers, and accordingly they are often ineffective, when dealing with new environmental health problems.

These provisions have largely been eclipsed by new provisions in the RMA,\textsuperscript{1353} and environmental health officers are left in a position where they are unable to effectively carry out their role due to outdated tools. The Public Health Bill 2007 provides reform of this area,\textsuperscript{1354} however these reforms are inadequate, and do not fully appreciate that the nature of environmental health issues have changed over time.

There are several options that may be used to address this issue. First, EHOs can continue to exercise the nuisance powers but be mindful of the constraints.\textsuperscript{1355} Where the power is inappropriate, they could rely on other tools, such as s 17 of the RMA. While it would be possible for an EHO to function this way, this is not the most efficient use of their resources and skills. Reliance on other provisions, such as s 17, is also inadequate as these sections do not provide the “health” focus which is provided in the Health Act.\textsuperscript{1356} Secondly, Parliament could address the shortcomings of the section by removing the power and addressing environmental health issues under more updated legislation. Again, this fails to provide for the “human health focus” that has been built into the Health Act provisions. It also fails to recognise the invaluable skills and experience that EHOs and territorial authorities have developed over the years.\textsuperscript{1357} Thirdly, a local authority could attempt to deal with any issues (that fail to fit within the wording of the nuisance provision) by enacting bylaws under s 23(e) of the Health Act for the “protection of public health”.\textsuperscript{1358} However before a bylaw can be made, a local

\begin{itemize}
\item \textsuperscript{1352} Health Act 1956, ss 29, 41 and 42.
\item \textsuperscript{1353} Resource Management Act 1991, s 17.
\item \textsuperscript{1354} Public Health Bill (177-2), cl 166.
\item \textsuperscript{1355} Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
\item \textsuperscript{1356} See the discussion in chapter 6, \textit{Environmental Health Functions of Local Government}.
\item \textsuperscript{1357} Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
\item \textsuperscript{1358} Health Act 1956, s 23(e).
\end{itemize}
authority must first determine “whether a bylaw is the most appropriate way of addressing the perceived problem”. The creation of a bylaw to deal with the failure of a current provision would not satisfy this requirement. This is because amendment or replacement of the provision is obviously the most “appropriate” cause of action.

A final option, supported by some environmental health professionals, is the replacement of the nuisance powers with an independent environmental health approach. This could involve removing any express reference to “nuisance”, as the term “is inherently limited by its historical context”, and replacing it with a more general environmental health reference.

For example, the “general powers and duties of local authorities” in s 23 of the Health Act provides that local authorities are directed:

(b) to cause inspection of its district to be regularly made for the purpose of ascertaining if any nuisances, or any conditions likely to be injurious to health or offensive, exist in the district.

(c) if satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition.

Instead these duties could be replaced with a more general term referencing environmental health, and stating that local authorities are directed to inspect their districts for any environmental situation which may “pose a threat to human health”. The aim would be to produce a broad duty, which would allow for wider application. However it appears that this duty may be too broad, and fails to hinge itself sufficiently on environmental health, to become a credible change.

Instead, a further option would be to ensure the term “offensive” is kept in the legislation (as the Public Health Bill 2007 has proposed removing the term and only keeping the phrase “injurious”) and redefining the term “offensive” by placing a

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1359 Local Government Act 2002, s 155(1).
1360 Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
1361 Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
1362 Health Act 1956, s 23(b) and (c).
1363 Christopher Reynolds “Dangerous to health or ‘offensive’: The nuisance power in New Zealand and Australian environmental health – some arguments for reform” (2008) 30(4) & 31(1) NZJEH 8.
definition in the interpretation section of the Act\textsuperscript{1364} so that it includes “environments (as listed in the Act) that, in the opinion of the local authority, pose a real threat to human health”. The local authority could then provide further guidelines (based on environmental health principles), as to what type of situations this would capture, and what is required to constitute a “real threat”.

This approach broadens the application of the nuisance provision beyond offensive or injurious, but still limits its application to situations that pose a “real threat” to avoid frivolous claims. Admittedly the term “real threat” is not ideal, as it is open to uncertainty, but something is required to limit the provision to give it a working scope. The use of local authority guidelines in their plans could help define this term and avoid potential litigation. While none of these suggestions are ideal, the area is worthy of reform, and Parliament should contemplate further revision of s 23,\textsuperscript{1365} before the bill is progressed further.

Similarly, cleansing order provisions could be updated to allow local authorities to deal effectively with modern environmental health situations. At the moment local authorities use cleansing orders, where the cleansing of a building is “necessary for preventing danger to health or for rendering premises fit for occupation”.\textsuperscript{1366} Each individual cleansing order contains details on the method for cleansing and a time frame for when the work must be completed.\textsuperscript{1367} As discussed in chapter 6, this means that inconsistencies can occur between the requirements of each cleansing order. Even if standard templates are used in one council, (i.e. listing what is required in situation X to make a building sanitary), this still means there could be regional or national inconsistencies. Smaller councils, with less resources and access to expert consultants, may also find it difficult to decide exactly what must be required to make a building safe.

An alternative would be to make the orders more prescriptive with national guidance. The example given in chapter 6 of methamphetamine lab clean up suggests that national direction by way of a mandatory statutory provision or regulation is required to

\textsuperscript{1364} Health Act 1956, s 2.
\textsuperscript{1365} Health Act 1956.
\textsuperscript{1366} Health Act 1956, s 41(1).
\textsuperscript{1367} Health Act 1956, s 41(1).
effectively deal with this issue. However a strong reaction is not necessarily required in every case.

Instead central government (the Minister of Health or Minister for the Environment as appropriate), could assist local authorities by consulting with them, and helping them establish “templates” for requirements to satisfy cleansing orders. This input would provide clear instruction to the local authority, and the owner or occupier, so that the “cleansing” can be carried out quickly and effectively. Alternatively, regional consultation could take place between local authorities to establish a set of acceptable templates. However the process may still require coordination or assistance from central government to establish.

In this manner the cleansing order provisions could be updated, to move away from the traditional ideas of preventing the spread of disease, and focus on becoming contemporary tools, which effectively deal with the current environmental health concerns that local authorities face.

### 7.2.5 Providing up-to-date legislation

The spread of primary environmental health provisions between the RMA and the Health Act (and to a lesser extent the NZPHDA) does not necessarily create issues. The use of two statutes allows for a clear environmental focus in one Act and health focus in the other. The main problem comes in the updating and reform of both areas of law. In 2009 substantial resource management reform was instigated with the passing of the Resource Management (Simplifying and Streamlining) Amendment Act 2009\(^{1368}\) aimed at reducing bureaucracy layers and simplifying the resource consent process. Local government reform was also initiated by the last National-led government resulting in a focus on core services for local government and the introduction of standard performance measures.\(^ {1369}\) Further reforms in 2012 focus on redirecting the purpose of local government,\(^ {1370}\) while additional reforms were planned for 2013 with the introduction of a further Local Government Act 2002 Amendment

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\(^{1368}\) Discussed further in chapter 5, *Environmental Health Functions of Central Government*, and chapter 9, *Proposed Solutions and Reforms*.


\(^ {1370}\) Discussed in chapter 9, *Proposed Solutions and Reforms*.  

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Bill (No 3) focused on developing a framework for central / local government regulatory roles.

Comparatively, reform in health has been slow since the introduction of the Public Health Bill in 2007 and the Food Bill in 2010. Both bills have been to select committee and are awaiting their second reading.\textsuperscript{1371} As discussed in chapters 5 and 6, there are currently issues with reconciling the Health Act 1956, and RMA 1991, which were introduced 35 years apart. The issue has been further compounded with the RMA and LGA being updated in recent reforms, and the Health Act remaining largely in its 1956 format.\textsuperscript{1372} This places the ideology behind some of the provisions of the two Acts at least 55 years apart. Even if the Public Health Bill was given its second reading now, the bill itself was written in 2007, five years ago, and prior to the substantial resource management and local government reforms that have occurred. A substantial re-write of the Act would be required before it could be considered compatible with other contemporary environmental health legislation.

When considering the flowchart, *Central Government and Local Government Environmental Health Flowchart*, in the appendices of this thesis, the time scale essentially means that various parties are attempting to interact with each other using functions and powers that are decades apart.

Accordingly another aspect of environmental health reform, could focus on ensuring that environmental health legislation is kept contemporary, and that reforms are carried out at similar times, to ensure that a consistent approach is taken in updating each of the statutes. However it is difficult to see how such a reform could be enforced, given that Parliament is responsible for choosing and progressing legislation (at its discretion).

\textsuperscript{1371} Public Health Bill (177-2) had its first reading on the 11th December 2007. The select committee reported back on the 26th of July 2008. Food Bill (160-2) had its first reading on the 22nd of July 2010. The select committee reported back on the 16th of December 2010.

\textsuperscript{1372} There has been a substantial revision of drinking water provisions with the insertion of Part 2A into the Health in 2007 via s 7 of the Health (Drinking Water) Amendment Act 2007.
7.3 ARE THE “CORE PRINCIPLES OF ENVIRONMENTAL HEALTH” BEING ADEQUATELY PROVIDED FOR UNDER THE CURRENT SYSTEM?

Chapter two of this thesis, Meaning and Importance of Environmental Health, discussed the core principles of environmental health. These principles are relevant here in examining the adequacy of New Zealand’s current approach to environmental health, and whether this approach aligns with the core principles.

Environmental health operates with consideration for the past, present and future – preserving the integrity of the environment for future generations. This is achieved through adopting a sustainability approach in environmental health management. Observance of these principles is at the core of New Zealand’s framework, and it is thoroughly provided for. The purpose of the RMA is the “sustainable management of natural and physical resources”, 1373 to provide for people’s health and well-being in a way that sustains resources for “future generations”. 1374

The LGA further provides that a local authority must approach all its actions using a “sustainable development approach”. 1375 The nature of the LGA (as the Act which provides the core services and principles of local government), means that this requirement for local authorities to adopt a sustainable development approach, will be applicable to them when carrying out their functions under any statute. Accordingly sustainability (and preservation of resources for future generations) is a central tenet of New Zealand environmental health planning.

A second core principle is the recognition of health inequalities which includes the identification of disadvantaged groups to ensure equal rights to environmental health. Health inequalities (addressed in both chapter 5 and chapter 6) are an important focus of health based legislation. The purpose of the NZPHDA makes direct reference to “reducing health disparities” and the reference is included in the proposed purpose

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1375 Local Government Act 2002, s 3(d). Note that amendments after the date of this thesis have removed the reference to sustainable development from s 3(d). However a reference to sustainable development is still included in s 14(1)(b).
clause of the Public Health Bill 2007. The clause includes a focus on increasing Maori participation in order to reduce health disparities.

Parliament provides a statutory obligation on the Ministry of Health to produce national health strategies. Since the establishment of the “New Zealand Health Strategy” in 2000, the Ministry of Health has continued to produce strategies, aimed at reducing health disparities. These include strategies aimed at Maori, Pacific people and the disabled. DHBs may also target specific groups (such as infants, young children or the elderly), in their initiatives as part of reaching their own goals (and national health targets). The recently adopted “Whanau Ora” approach to health, also encourages a focus on all members of the family (including addressing vulnerable parties).

From an environment perspective there is less “direct” focus on health disparities, however targeted initiatives aimed at housing quality, insulation, and addressing overcrowding, all have a flow-on effect of benefiting lower socio-economic groups (who are also a vulnerable target group).

A further core principle is public participation in environmental health management. Public consultation is supported in both health and resource management legislation. The consultation provisions have been discussed extensively in chapter 5 and chapter 6, while consultation provisions in relation to Maori are addressed in chapter 8, *Environmental Health – Maori Perspective*. While the provision for consultation is adequately provided for in the New Zealand system, there is no compulsion on central government to follow any recommendations or suggestions made in consultation (it is at the Minister’s discretion).

The relevant Minister also has the advantage of setting the terms of reference for consultation, which again limits the ability of parties to consult. Considering there is no compulsion to follow recommendations made during consultation, the strict limits on

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1376 Public Health Bill 2007 (177-2), cl 3(1).
1377 This is discussed further in chapter 8, *Environmental Health – Maori Perspective*.
consultation are unnecessary. At local government level, local authorities are required by statute to receive information with an “open mind” and give any suggestions “due consideration in their decision making”.1381 While it would not make sense, to compel central government to follow recommendations made during consultation, it would be possible to include a similar provision in relation to a Minister’s duties when consulting. This would not only strengthen the consultation provisions, it would also strengthen public confidence in the consultation process (particularly where decisions are being moved from a local district to a national scale).

The final core principle of environmental health is the need for cooperation, and partnership between the bodies involved in addressing environmental health matters. As discussed above, New Zealand is working towards fulfilling this principle and is making positive steps in addressing problems in this area.

While central government and local government appear moderately successful in fulfilling the core principles of environmental health, there is room for potential improvement and reform. This includes considering options for increasing national direction, improving coordination between central and local government, (and between the various parties at local government level), updating outmoded provisions and legislation, and ensuring that a community focus is maintained in environmental health management.

1381 Local Government Act 2002, s 82(1)(e).
CHAPTER 8 - ENVIRONMENTAL HEALTH – MAORI

PERSPECTIVE

A discussion of Maori environmental health perspectives is important for a clear understanding of New Zealand’s environmental health framework. This chapter focuses on the Maori perspective by considering the recognition of Maori and Maori interests in core environmental health legislation, strategies and plans. This is followed by a discussion of the government’s obligations and the adequacy of the provisions relating to Maori in environmental health. The overall objective of this chapter is to address three main questions:-

1. What are the avenues for effective Maori influence in environmental health?
2. Are Maori expectations being met by the current framework?
3. What changes are required (if any) to provide for appropriate accommodation of Maori interest in environmental health management?

First it is important to note that there is not “one” Maori world view or understanding of environmental health concepts. While there are common elements in understanding, different values may be accorded different significance by different tangata whenua groups. As such, this thesis will consider the common elements relevant to environmental health while acknowledging that not all Maori share the same opinions. This variance is also important in demonstrating how effective and efficient Maori involvement in environmental health cannot merely be achieved via legislative measures. For example, it would be impossible to include a set definition on what key points are important to Maori, or to state a clear set of guidelines as to what is necessary to make an activity acceptable to Maori or satisfactory to enable Maori to carrying out a kaitiakitanga (guardianship) role. Instead, solutions for effective Maori influence in environmental health must be based on providing solutions and management
frameworks that acknowledge the roles and responsibilities of Maori without unduly restricting the role by defining it in set terms.

8.1 MAORI ENVIRONMENTAL HEALTH CONCEPTS

Chapter three, *The History of Environmental Health*, explained how early westernised concepts of environmental health (which influenced the development of New Zealand’s framework)\(^ {1382}\) saw human health and environmental health as two separate things. The intrinsic link between the two was only acknowledged once epidemiology studies and science showed a causal connection between ill health and the pollution of an industrialised 19\(^{th}\) century environment. This discovery led to the development of the first environmental health legislation. During the 1960s and 1970s an increased environmental awareness (together with improved science and technology) helped this understanding evolve further to reflect the importance of human activities being compatible with environmental principles. The understanding was that the environment should be maintained not only to prevent ill health but to improve health and living quality even in the absence of sickness or disease.\(^ {1383}\)

In comparison, traditional Maori concepts of health and environment were never separated. The Maori worldview followed a holistic approach where whakapapa (ancestral) links between humans and environment provided all aspects of the environment with mauri (a life force) which required balance and protection.\(^ {1384}\) In 2011 the Waitangi Tribunal emphasised this idea, stating that in considering Maori perspectives on the environment and resource management it must first be understood that Maori hold an “essential belief” that they are descended from the landscape and environment.\(^ {1385}\) This relationship is fundamental in creating Maori culture as:-\(^ {1386}\)

…it was through interaction with the environment that early Polynesian settlers became Maori…the exercise of kaitiaki relationships with taonga in the environment is therefore vital to the continued expression of Maori culture itself.

\(^ {1382}\) See chapter three of this thesis, *The History of Environmental Health*.
\(^ {1383}\) See chapter two of this thesis, *Meaning and Importance of Environmental Health*, and the discussion on key developments in environmental health philosophy.
This ancestral link between Maori and nature has been recognised by the Environment Court in case law\textsuperscript{1387} and is discussed further on in this chapter.

In keeping with this awareness, Maori also followed traditional customs and codes of behaviour for the preservation of health (both human and environmental).\textsuperscript{1388} This customary protocol was based on the concepts of “tapu” (health risks or environmental hazards), “noa” (safety)\textsuperscript{1389} and “rahui” (placing things on restriction) with the aim of ensuring Maori adapted to the environment to ensure survival and preservation of resources for future generations. For example, human waste was considered tapu and required burying in the land (papatuanuku) so that it could be cleansed by the earth and rendered noa. It was considered abhorrent to release any human waste into waterways as this affected the mauri (life force) of the water, while also creating a human health risk for water users. If an individual drowned where drinking water or shellfish were collected or fishing took place, the area would be considered tapu and a temporary rahui would be placed on the water to avoid people being exposed to contaminated food or water supplies. The observance of these rules ensured the protection of food and water sources and the avoidance of disease spreading within the community. While these rules had practical significance (in reducing exposure to health risks) they were incorporated into Maori culture as a “spiritual code”. Tohunga (iwi elders) were charged with enforcing these concepts to ensure full community endorsement\textsuperscript{1390} and carried out a role not unlike “health protection officers”.\textsuperscript{1391}

With shifts in Maori society following colonisation and the replacement of the “spiritual code” with government regulation, concepts such as tapu moved towards the sacredness or spiritual nature of an area rather than its environmental harms. Academics such as Mason Durie\textsuperscript{1392} believe that reinstating the environmental and health emphasis may be the key to igniting environmental health interests beyond the marae and setting environmental health back into Maori communities. Inter-agency led projects based on increasing Maori participation in environmental health and improving Maori influence in environmental health are discussed further in this chapter.

\textsuperscript{1388} Mason Durie, Maori Health Promotion (Massey University Presentation, Massey, 2005).
\textsuperscript{1389} Mason Durie, Maori Health Promotion (Massey University Presentation, Massey, 2005).
\textsuperscript{1390} Mason Durie, Maori Health Promotion (Massey University Presentation, Massey, 2005).
\textsuperscript{1391} Mason Durie, Maori Health Promotion (Massey University Presentation, Massey, 2005).
\textsuperscript{1392} Mason Durie, Maori Health Promotion (Massey University Presentation, Massey, 2005).
8.2 RECOGNITION OF MAORI IN ENVIRONMENTAL HEALTH LEGISLATION

In chapter five, *Environmental Health Functions of Central Government*, and chapter six, *Environmental Health Functions of Local Government*, a set of core legislation related to environmental health functions and duties has been identified. These Acts also illustrate the way government recognises Maori and provides for their interests in environmental health. A table has been produced and attached in the appendix of this thesis – “References to Maori in Environmental Health Legislation”. This table demonstrates that reference to Maori falls into the following key areas:-

- Acknowledgement of the Treaty of Waitangi
- Maori consultation
- Iwi Authorities
- Enabling Maori participation
- Provision of information to Maori
- Acknowledging Maori
- Consideration of Maori Interests
- Maori representation

These areas will be discussed further to demonstrate what avenues for effective Maori influence are available to Maori.

8.2.1 Acknowledgement of the Treaty of Waitangi (the Treaty)


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1393 See chapters and table of environmental health acts administered by central government in the appendix of this thesis.
1399 Climate Change Response Act 2002, s 3A.
1400 Land Transport Management Act 2003, s 4.
1401 Environmental Protection Authority Act 2011, s 4(b).
and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 all contain Treaty of Waitangi provisions.

The way government approaches the inclusion of the Treaty into each Act has evolved over the years. Earlier acts, such as the Conservation Act and the RMA provided simple provisions which provided for the principles of the Treaty to be taken into account by all persons “exercising functions and powers”\(^{1402}\) under the Act.

In later acts, such as the NZPHDA and LGA, Parliament was more direct in how adherence to the principles could be achieved with both Acts making specific mention of allowing for Maori to contribute to decision making\(^{1403}\) and Maori participation and contribution.\(^{1404}\) This detail was further increased in the CCR Act\(^ {1405}\) with s 3A which acknowledged the principles of the Treaty and provided instructions on how to give effect to the principles of the Treaty. This is achieved by making it mandatory for the Minister to consult with Maori representatives\(^ {1406}\) where Maori “have or are likely to have an interest”\(^ {1407}\). A review panel must be established (where at least one member has knowledge of tikanga Maori and Treaty principles).\(^ {1408}\) The review panel’s terms of reference “must incorporate reference to the principles of the Treaty”.\(^ {1409}\) While the detail in this section reflects a condensing of provisions regarding Maori into one section (rather than across several sections in other acts) it also reflects a move towards Parliament recognising the need for more specific instructions as to what is required to fulfil Treaty obligations under legislation.\(^ {1410}\)

In each of these sections there is clear reference to the principles of the Treaty rather than the Treaty itself. This is a reoccurring theme in New Zealand legislation. While the various sections do not list the principles, or outline how consideration of the principle can be achieved, the High Court has provided some insight by identifying “central principles” such as partnership, good faith, active protection and rangatiratanga.

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\(^{1402}\) Resource Management Act 2001, s 8.


\(^{1405}\) Climate Change Response Act 2002, s 3A inserted in 2009 by the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009, s 7.

\(^{1406}\) Climate Change Response Act 2002, s 3A(a).

\(^{1407}\) Climate Change Response Act 2002 s 3A(f).

\(^{1408}\) Climate Change Response Act 2002, s 3A(d)(i).

\(^{1409}\) Climate Change Response Act 2002, s 3A(d)(iii).

\(^{1410}\) The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 also reflects this new style in Treaty provision.
which the Court considers should be observed by the government in carrying out its role.\textsuperscript{1411}

While partnership does not necessarily denote an equal role, the obligation to act in good faith requires both parties (Maori and the government) to work openly with each other in an effort to maintain a partnership relationship (hence the reference to good faith). The concept of “active protection” involves a duty on the government to protect Maori interests and ensure Maori participation in resource management\textsuperscript{1412} while rangatiratanga (sovereignty) and closely related concepts such as Kaitiakitanga (guardianship) reinforce the idea of Maori involvement in Maori interests in accordance with tikanga Maori. These later concepts are defined in the RMA\textsuperscript{1413} with kaitiakitanga meaning the “exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori”,\textsuperscript{1414} and tikanga Maori being Maori “customary values and practices”.\textsuperscript{1415} The definition of kaitiakitanga in the Act has been further refined in case law with the planning tribunal stating that kaitiakitanga requires “ongoing involvement”\textsuperscript{1416} and the “opportunity to exercise guardianship”\textsuperscript{1417} to be afforded to local Maori.\textsuperscript{1418}

\subsection*{8.2.2 Maori Representation}

Part of enabling Maori to actively participate in environmental health management and fulfil the Treaty principle of active protection involves making adequate provision for Maori representation at both central and local government level and in related boards and committees. This was originally achieved through provisions requiring Ministers to consult with the Minister of Maori Affairs prior to making appointments. For example, provisions establishing the New Zealand Conservation Authority,\textsuperscript{1419} Conservation Boards,\textsuperscript{1420} Local Government Commission\textsuperscript{1421} and Waste Advisory

\begin{thebibliography}{9}
\bibitem{1411} Carter Holt Harvey Limited v Te Runanga o Tuwharetoa ki Kawerau [2003] 2 NZLR 349 (HC).
\bibitem{1412} Treaty of Waitangi Principles.
\bibitem{1413} Resource Management Act 1991, s 2(1).
\bibitem{1414} Resource Management Act 1991, s 2(1).
\bibitem{1415} Resource Management Act 1991, s 2(1).
\bibitem{1416} Tautari v Northland Regional Council (PT) A55/96, 24 June 1996.
\bibitem{1418} Minhinnick v Ministry of Corrections (NZEnvC) A43/04, 6 April 2004.
\bibitem{1419} Conservation Act 1987, s 6D.
\bibitem{1420} Conservation Act 1987, s 6P.
\bibitem{1421} Local Government Act 2002, s 33.
\end{thebibliography}
Board all require Ministers to consult with the Minister of Maori Affairs prior to appointing members. While members may not necessarily be Maori, under the Conservation Authority, Local Government Commission and Waste Advisory Board provisions, members are required to demonstrate knowledge and skill of Tikanga Maori and have an understanding of Maori interests. Membership of the Conservation Boards strongly suggests provision for board members who are actually Maori, as the Act requires the Minister to make provision for board members who reflect tangata whenua interests in an area. In certain national parks or claim areas compulsory Maori representation is achieved as Ministers are required to appoint representatives from various Maori Trust Boards and iwi representatives.

The Minister of Maori Affairs must also be consulted prior to the selection of members for special tribunals (where appropriate) and prior to the appointment of the Environment Commissioner or Deputy Environment Commissioner. While these sections do not necessarily provide for Maori appointment, the sections illustrate Parliament’s intention to acknowledge Maori interest and involve Maori in the selection process.

In 2000, the NZPHDA made a significant contribution to Maori representation by extending the concept of compulsory Maori representation to District Health Boards (DHBs), rather than provision for representation following consultation with the Minister of Maori Affairs. The role and objectives of DHB’s make specific provision for Maori, including the objective to “reduce health disparities by improving health outcomes for Maori”. The functions of DHBs make express mention of Maori in s 23(1)(d) and (e).

For the purpose of pursuing its objectives, each DHB has the following functions:

- (d) to establish and maintain processes to enable Maori to participate in and contribute to strategies for Maori Health Improvement.

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1422 Waste Minimisation Act 2008, s 93(4).
1424 Conservation Act 1987, s 6P(3).
1428 New Zealand Public Health and Disability Act 2000, s 22(1)(e).
(e) to continue to foster the development of Maori capacity for participating in the health and disability sector and for providing for the needs of Maori.

The NZPHDA requires compulsory Maori representation on DHB boards with the Minister required to ensure that Maori membership of the boards is proportional to the Maori population in the DHB’s catchment area.\footnote{1430} A minimum of two Maori memberships are required on every board (regardless of population).\footnote{1431} As each board consists of seven elected members\footnote{1432} and up to four appointed members,\footnote{1433} these provisions provide a clear opportunity for Maori participation. Similar provisions provide for compulsory Maori representation on various health related committees, including the Community and Public Health Advisory Committee,\footnote{1434} Disability Support Advisory Committee\footnote{1435} and the Hospital Advisory Committee.\footnote{1436} The Act also provides that where other committees or boards are created under the Act, these committees or boards must ensure Maori representation.\footnote{1437}

The requirement to consider Maori health combined with a compulsory requirement to encourage Maori participation and provision of services, together with compulsory representation, shows a strong role for Maori in the provision of primary health services. What makes these DHB provisions even more significant is that there is “no parallel in respect of any obligation to appoint Maori to local authorities or community / local boards”.\footnote{1438} However the Local Government (Auckland Council) Act 2009, discussed later in this chapter, does allow for the Independent Maori Statutory Board (established under the Act) to appoint two people to “sit as members on each of the Auckland Council’s committees that deal with the management and stewardship of natural and physical resources”.\footnote{1439}

\footnote{1430} New Zealand Public Health and Disability Act 2000, s 29(4)(a).
\footnote{1431} New Zealand Public Health and Disability Act 2000, s 29(4)(b).
\footnote{1432} New Zealand Public Health and Disability Act 2000, s 29(1)(a).
\footnote{1433} New Zealand Public Health and Disability Act 2000, s 29(1)(b).
\footnote{1434} New Zealand Public Health and Disability Act 2000, s 34.
\footnote{1435} New Zealand Public Health and Disability Act 2000, s 35.
\footnote{1436} New Zealand Public Health and Disability Act 2000, s 36.
\footnote{1437} New Zealand Public Health and Disability Act 2000, sch 3, s 38 & sch 6, s 23.
\footnote{1438} Kenneth Palmer \textit{Local Authorities Law in New Zealand} (Thomson Reuters, Wellington, 2012) at 724.
8.2.3 Maori Consultation

The obligation to consult with Maori and the ability of Maori to make submissions on matters in their interest is one of the core avenues for effective Maori influence in environmental health.

**Obligations to Consult with Maori when preparing Planning Documents and Policy Statements**

Consultation during the planning stages of documents provides Maori with ample opportunity to have input on documents. When considering environmental health, Maori have the opportunity to have impact via consultation on pest management strategies,\(^{1440}\) conservation management strategies,\(^{1441}\) freshwater fisheries management plans,\(^{1442}\) regional coastal policy plans\(^{1443}\) and the Minister of Conservation’s statements of general policy.\(^{1444}\)

There are also specific provisions providing for consultation by central government and local government to allow both levels of government to ensure fulfilment of Treaty principles including partnership and active protection. The High Court recognises this obligation as extending to local authorities (as delegated authorities) by stating that local authorities are “answerable to the whole community for giving effect to the Treaty vision in the manner expressed in the RMA”\(^ {1445}\). While the wording of the provisions make it clear that consultation is mandatory,\(^ {1446}\) the importance of consultation has been reinforced by the High Court:-\(^ {1447}\)

…the obligation to consult with the relevant iwi authority is mandatory and unconditional. All that is required is that tangata whenua be “affected” by the proposal.

Central government’s mandatory obligations to consult are contained in ss 44 and 46 of the RMA. In recommending the creation of a national environmental standard (NES)

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\(^1440\) Biosecurity Act 1993, s 73.
\(^1441\) Conservation Act 1987, s 17F.
\(^1442\) Conservation Act 1987, s 17K.
\(^1443\) Resource Management Act 1991, sch 1, s 2.
\(^1444\) Conservation Act 1987, s 17B.
\(^1445\) Ngati Maru ki Hauraki Inc v Kruithof [2005] NZRMA 1 (HC) at para [57].
\(^1446\) By using terms such as “shall, must”.
\(^1447\) Waikato Tainui Te Kauhanganui Inc v Hamilton City Council [2010] NZRMA 285 (HC) at para [90].
the Minister must notify “public and iwi authorities”\textsuperscript{1448} and provide details of the proposed standard and the Minister’s “reasons for considering the standard is consistent with the purpose of the Act”.\textsuperscript{1449} In order to provide satisfactory consultation the Minister must establish a process that, in the Minister’s opinion, provides “adequate time and opportunity to comment”.\textsuperscript{1450}

The consultation process for creating national policy statements (NPS) is similar. Where a Minister, at their discretion, considers a NPS is required, they must “seek and consider comments” from iwi authorities and “other persons and organisations that the Minister considers appropriate”\textsuperscript{1451} prior to preparing the NPS.

While ss 44 and 46 appear to outline the same process there is a subtle difference between consultation on NES and consultation on NPS. With NES the consultation with Maori takes place after the Minister has prepared the subject matter for the NES, with NPS the consultation must take place before the Minister is allowed to prepare the NPS. This creates an inconsistency as to when consultation on national planning instruments must take place. In 2013 central government admitted this inconsistency and have proposed changes which will align the two processes so that before preparing proposed NES or NPS, consultation with Maori must take place.\textsuperscript{1452} This proposed change could have a positive effect on consultation by allowing Maori considerations to be heard before the drafting of the document, increasing the chance of Maori influencing the document content.

The express mention of iwi authorities demonstrates Parliament’s desire for Maori to have some influence in the creation of national planning documents. However it is important to note that the opportunity for influence is limited in some respects. First, there is no opportunity for Maori to suggest subjects for NES or NPS. It is only after the Minister, in his or her discretion, has decided on the subject matter of the planning document that consultation takes place. Secondly, while there is an obligation to consult there is no obligation to follow any recommendation made by Maori, and in the case of NES, the Minister is afforded considerable freedom by having the discretion to

\textsuperscript{1448} Resource Management Act 1991, s 44(2)(a).
\textsuperscript{1449} Resource Management Act 1991, s 44(2)(a)(ii).
\textsuperscript{1450} Resource Management Act 1991, s 44(2)(b).
\textsuperscript{1451} Resource Management Act 1991, s 46(a).
establish the consultation process. Finally Maori do not have a sole right to consultation. Consultation is with a variety of parties, and in the case of NPS, with a very broad range of parties based on ministerial discretion. This leads to a balancing of interests and ideas presented by each party with no apparent hierarchy as to whose interests will take priority or how these interests can be balanced.

Local government’s obligation to consult is contained in cl 3 of schedule 1 of the RMA. In preparing proposed policy statements or plans local authorities must consult with central government (via the appropriate Ministers) together with other local authorities and tangata whenua “who may be so affected” via iwi authorities. Like the previous provisions, there is no obligation to follow any recommendations and tangata whenua are only one of the consulted parties.

Section 35A of the RMA provides guidance on who to consult. Under this section local authorities have a duty to “keep records about iwi and hapu” in each respective area. These records provide contact details for each iwi authority and any other representative group within the local authorities region or district. The records include acknowledgement of planning documents “recognised by each iwi authority and lodged with the local authority” and areas where Maori exercise kaitiaki in the region or district. While the onus is on local government to collate and hold the information, central government also has a duty to provide local authorities with information on relevant iwi and hapu.

It is important to note that the records held by local authorities are purely to assist with carrying out roles and obligations under the Act. Accordingly these records are primarily used to determine who should be invited to consult. The records do not provide any insight into which iwi or hapu have rangatiratanga (sovereignty) over different areas (particularly where there is more than one competing iwi in an area).

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1453 depending on the section, this includes other Ministers, regional authorities, territorial authorities, iwi authorities, and a Minister discretion for consultation with “appropriate” persons or organisations who may “also require consultation.
1455 However Part II considerations of the Resource Management Act 1991 may provide some assistance.
1456 Resource Management Act 1991, sch 1, cl 3(d).
Nor does the record provide a definitive guide as to all areas where Maori assert kaitiakitanga (guardianship). While attempts are made to keep the record complete, Maori may choose not to disclose wahi tapu (sacred places) or sensitive information to local authorities if they do not wish for these to be included in the public record. The failure to include wahi tapu on the district plan will not mean the site cannot be protected. However additional collaborative evidence\textsuperscript{1462} may be required prior to a site being recognised in a hearing (if it is not provided for on the plan).

*What is required for the obligation to consult to be satisfactorily discharged?*

*Adequate Consultation as defined by Legislation*

Both the LGA and RMA provide further direction as to what is required to achieve adequate consultation. Section 82 of the LGA outlines “principles of consultation” which must be followed where local authorities undertake consultation with other parties. These include requirements that people who are consulted receive “reasonable access to relevant information”\textsuperscript{1463} and are “encouraged” to participate in consultation.\textsuperscript{1464} People must be given “clear information” on the “purpose” of consultation and be given “reasonable opportunity to present their views”.\textsuperscript{1465} While there is no obligation on local authorities to follow any recommendations made by Maori or other parties during consultation, Parliament has been more direct in its instructions to local government stating that local authorities must receive information with an “open mind” and give any suggestions “due consideration” in their decision making.\textsuperscript{1466}

Clause 3B in schedule 1 of the RMA provides various points that must be addressed by local authorities to discharge their obligations to consult. Local government is required to establish a manner of consultation which provides opportunities for iwi authorities to consult and ensures consultation actually takes place.\textsuperscript{1467} It is important to note the clause requires local authorities to consider ways to “foster the development of [Maori]

\textsuperscript{1462} Including archaeological or matauranga Maori evidence.  
\textsuperscript{1463} Local Government Act 2002, s 82(1)(a).  
\textsuperscript{1464} Local Government Act 2002, s 82(1)(b).  
\textsuperscript{1465} Local Government Act 2002, s 82(1)(c)&(d).  
\textsuperscript{1466} Local Government Act 2002, s 82(1)(e).  
\textsuperscript{1467} Resource Management Act 1991, sch 1, s 3B(b)&(c).
capacity to respond to an invitation to consult”¹⁴⁶⁸ and which enables Maori to “identify resource management issues of concern to them”.¹⁴⁶⁹

How these latter points are to be achieved has led to some conflict between Maori and government. The Waitangi Tribunal believes that the legislation is lacking as it does not provide more specific assistance to Maori in enabling meaningful consultation. Parliament has argued the inclusion of the consultation provisions is sufficient to satisfy any obligations under the principles of the Treaty, stating that government can discharge their role if they invite iwi to consult (and consultation takes place).¹⁴⁷⁰

The Waitangi Tribunal has criticised this as being too simplistic and not understanding the issues that Maori face in being involved in active consultation. The Tribunal has recommended that for Maori to have the capacity to respond to matters and to be able to identify issues of interest to them adequately, they require support from the Crown. This could involve the provision of funding to aid Maori in getting advice on these issues in order to provide full and complete consultation and providing education and assistance to iwi to ensure they fully understand the issues involved prior to submitting their view points.¹⁴⁷¹

Conflicting opinions over whether adequate consultation has taken place has often resulted in judicial review. While judicial review allows for enforcement of consultation requirements and obligations, it is an expensive and time consuming process. Judicial review is not the most appropriate vehicle to be used here when there are other less expensive and more permanent options available that would save time, money and resources and avoid lengthy court proceedings.

If Maori expectations are not being met by the current consultation procedure (as evidenced by the number of judicial review cases in this area) then the issue could be addressed by Parliament introducing more specific consultation procedures into legislation or providing a national instrument for local government which outlines how consultation should take place and what would be required for adequate consultation.

¹⁴⁶⁸ Resource Management Act 1991, sch 1, s 3B(a).
¹⁴⁶⁹ Resource Management Act 1991, sch 1, s 3B(d).
An increased provision of support for iwi management plans (which will be discussed later in this chapter) could also assist in Maori viewpoints being expressed in consultation situations. Ideally the issues of funding parties to ensure they can actively participate in consultation, and providing education and advice to parties to allow for full consultation, should be addressed in amended consultation provisions. While it could be argued that this would increase the cost and time for consultation, it could be possible to provide special provision for Maori in these areas in fulfilment of the Treaty principles and enabling Maori to be active contributors and participants in environmental health management.

**Adequate Consultation as defined by Case Law**

In the absence of Parliament providing clarification on this matter, judicial review cases provide useful insight into the court’s interpretation of adequate consultation. First, (addressing the points made above) consultation must go beyond “mere sending of notice to Maori” and may require “financial support” to allow Maori to engage in adequate research to understand the proposals and the implications on Maori and their interests.1472

In 2012, *Greenpeace of New Zealand Incorporated v The Minister of Energy and Resources*1473 ([Greenpeace v Petrobras](https://www.stats.govt.nz/publications/Issue-76/Issue-76.pdf)), considered whether there was a “legal error” in the process used by the Minister to issue a permit to Petrobras International. A Maori iwi, Te Whanau-a-Apanui, argued that the Minister had failed to provide adequate consultation prior to issuing the permit and accordingly the Minister had erred in process and failed to have proper “regard to the principles of the Treaty”.1474

Gendall J asserted that in order to determine if adequate consultation has occurred, the entire history of the relationship between the parties must be considered (this revealed that the Minister had left numerous messages with iwi representatives asking them to consult). Gendall J emphasised that consultation required a commitment from both parties involved:—1475

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1474 *Greenpeace of New Zealand Incorporated v The Minister of Energy and Resources* [2012] NZHC 1422 (HC) at para [60].
1475 *Greenpeace of New Zealand Incorporated v The Minister of Energy and Resources* [2012] NZHC 1422 (HC) at para [133].
consultation, and good faith listening to concerns, are a two-way street with obligations on Maori interests and the Crown. Each have obligations to each other.

Te Whanau-a-Apanui had been given the same opportunity to consult with the Crown as other iwi (who had participated in the consultation). The fact that they had failed to consult was due to their own actions and not a result of any inadequacy on behalf of the Minister. The judge went further and pointed out that the Crown cannot be expected to know every iwi taonga concern unless Maori inform them of their concerns (again placing an active role on Maori to commit to the consultation once invited by the Crown).

Another recent case, The New Zealand Maori Council v The Attorney-General (Mighty River Power), has further assisted in defining adequate consultation. Here Young J advised that the amount of consultation required to satisfy adequate consultation could vary on a case by case basis. He reconfirmed the comments of Richardson J in an earlier case, that the level of consultation necessary can vary depending on whether the Treaty partner has “sufficient information in his possession for it to act” in a consistent manner with Treaty principles. In Mighty River Power the government was not obligated to consult on its privatisation policy as it could fulfil its obligations to Maori by ensuring that it still had the ability to provide redress to Maori. Arguments by Maori that the Crown had “predetermined its consultation with Maori” were also rejected with the judge determining that no evidence had been provided (by the Maori Council) to prove that Maori had any further information that should have been provided to the Crown (and would have affected the Minister’s decision). As in Greenpeace v Petrobras the judge concluded that Maori had been given the opportunity to consult with the Crown but had chosen not to do so during the time allowed.

Both these cases have made significant contributions to the requirements for adequate consultation. First, adequate consultation places an obligation on both parties to be actively involved. If the Crown has offered to consult with a party, they in turn have an

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obligation to contact the Crown and provide their viewpoints. Secondly, the level of consultation required will vary depending on the individual case.

However it is important to note that judicial review does not address whether the consultative procedures were adequate, but only if the consultation procedures had been followed in the individual case. Accordingly any significant improvement to how consultation takes place can only result from the Crown reviewing and clarifying current consultation provisions.

**Resource Consent Applicants / Holders Obligations to Consult with Maori**

Resource consent applicants are under no obligation to consult with Maori or to take their views into consideration in preparing their applications. However courts have considered it a matter of “best practice” stating that:

\[\text{responsible holders of resource consents will undoubtedly consult regularly with tangata whenua interests to ensure efficient dispatch of such applications. While this is good practice, there are difficulties in elevating the obligation to consult to the status of a legal obligation.}\]

Accordingly, a prudent resource consent applicant may still choose to consult with Maori, or consider tangata whenua beliefs, in an effort to resolve issues prior to a hearing. If Maori interests are taken into account and mitigation measures raised in the resource consent application the applicant may satisfy Maori concerns prior to the hearing and avoid Maori making submissions against the proposal and appearing in front of the consent authority as a submitter opposed to the granting of the consent. Prior discussion with Maori may also assist with meetings between applicant and submitters on mitigation or remediation of the effects of the consent, shortening the time taken and the financial costs of a lengthy hearing.

In making a decision the consent authority considers the granting of the consent subject to part two of the RMA and whether the granting of the consent would promote

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1483 *Carter Holt Harvey Limited v Te Runanga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC) at subpara [55][b].
sustainable management of natural and physical resources. The authority needs to work through the hierarchy of considerations in Part 2, that is, considering the items under s 6 (which must be regarded and provided for), decide what to do based on evidence and plan provisions, and give particular regard to matters in s 7 while taking into account obligations under the Treaty of Waitangi. Any mitigation or remediation made by the applicant (either prior to the consent hearing via consultation with affected parties, including Maori, or during the hearing) will be taken into account and following this the consent authority is able to make a broad, overall judgement regarding sustainable management. Accordingly consultation by the applicant can aid in the success of their application.

The Waitangi Tribunal has been critical of the fact that resource consent applicants have no positive obligations to consult with Maori. They see this as a barrier to Maori having effective influence over resource consent applications as it limits their ability to make submissions.

For example, Maori interests are acknowledged in a resource consent application in two main ways – by having Maori interests outlined in any applicable NES, NPS or regional or district plans or by acting as submitters on an application. However, if Maori interests are not recorded in the plans there may be nothing to “trigger consideration” of Maori interests meaning Maori must act as submitters in order to have their opinions heard. Whether Maori are able to make a submission depends on what notification path has been chosen for the consent application. Maori can only make a submission if the consent is publicly notified or, in the case of limited notification, they have been identified as an affected party.

This could have grave implications for Maori considering that a 2007/2008 survey revealed that only “4.7 percent of applications were publicly notified”.

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1488 These are considered under s 104 of the Resource Management Act 1991.
notification path selected also impacts on Maori and their ability to appeal a decision. Under s 120 of the RMA only those who have been a party to the earlier consent hearing (i.e. as a submitter) can appeal to the Environment Court. However s 274(1)(d) does provide a limited opportunity for other parties to attach themselves to an existing appeal on a consent hearing if they can demonstrate that they “have an interest in the proceedings that is greater than the interest that the general public has”.

While the above process can obviously be frustrating for Maori, this cannot be addressed by introducing any kind of obligation on consent applicants to consult with Maori. This is because the legislative obligation to consult with tangata whenua is derived from the Crown’s relationship with Maori and fulfilment of the partnership, good faith and active protection principles of the Treaty of Waitangi. It would also be impossible to justify changing the resource consent process to allow Maori to have a continual position as a submitter on every application. If the resource consent process gets more complicated this goes against the general premises of streamlining the RMA and the current National government’s approach of removing (what it sees) as some of the superficial layers standing in the way of resource consents. The current political trend is moving towards easing the way forward for resource consents rather than making consultation more complicated.

Instead, if Maori expectations are not being met, this should be addressed by ensuring that Maori concerns are clearly laid out in central and local government planning documents (which are taken into account when making a decision on a resource consent). This could be achieved by increasing the use of iwi management plans and increasing the communication between local government and Maori at planning level rather than at individual consent level. If Maori concerns were inherent in the plans this could remove the desire to be actively involved in individual resource consents. It also puts the onus for Maori consultation squarely onto government while also ensuring plans will be thorough in safeguarding Maori interests. Another advantage is it places the time and costs involved for facilitating consultation on government and not on the

individual consent holder who may be unfairly financially burdened by the need for consultation.

8.2.4 Iwi Authority Planning Documents

Recognition of Maori in planning documents also highlights the importance of Maori preparing Iwi Authority Planning Documents. Under the RMA regional councils have an obligation to take into account “any relevant planning document recognised by an iwi authority”\(^{1495}\) when “preparing or changing a regional policy statement”\(^{1496}\). Similarly, territorial authorities must take these planning documents into account if they have been “lodged with the territorial authority”\(^{1497}\).

However the strength of iwi authority planning documents as an avenue for Maori influence has been criticised with many iwi arguing their expectations of the provisions are not being met as they are hindered in their ability to put together effective planning documents.\(^{1498}\)

While the provisions appear to allow for Maori to express their opinions on environmental health management, Parliament provides no legislative direction as to plan content or “how these plans are to be prepared”.\(^{1499}\) As a result, iwi planning documents across different areas are “uneven in style and content”\(^{1500}\) with some arguing that by adding these provisions the Crown has put an unfair onus on Maori to articulate how their interests should be recognised and have removed themselves from having the burden of considering these matters. In response to this the Crown has argued that it has made adequate provision for Maori and that the Crown is not responsible if Maori lack the capacity to create plans that reflect and support their interests. However, in submissions to the Waitangi Tribunal on environmental management the Crown did admit that “iwi planning documents can be the most effective means to ensure that the views of Maori are expressed, clearly understood,

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\(^{1496}\) Resource Management Act 1991, s 61(2A).
\(^{1497}\) Resource Management Act 1991, s 74.
considered and incorporated into the planning process”\textsuperscript{1501} and conceded that the plans were not being used by local government to their full potential.

Accordingly the Waitangi Tribunal believes that the current system can be improved by providing for enhanced iwi management plans – more specifically, iwi resource management plans (IRMPs).\textsuperscript{1502} Hailed as the “lynchpin of a Treaty-complaint RMA system”\textsuperscript{1503} the Tribunal believes the plan should be determined by iwi in consultation with local government and become a core planning document. This will require iwi to be fully funded to allow them to access relevant experts required for plan preparation.

However while the current iwi authority plans are not being used to their full potential there is no real evidence that this change in plan system will have positive benefits for environmental health management. While it achieves the goal of increasing Maori influence, it dramatically increases the costs involved in local government planning. There is already provision for Maori interests to be included in national, regional and district planning through consultation and existing iwi plan provisions. The introduction of another plan may just add superficial layers to the area without any real benefit. Rather than introduce an additional type of planning document it would make sense to address the issues that hinder Maori in creating iwi management plans under the current provisions and address issues in consultation to ensure that future government planning and iwi planning adequately provides for Maori interests (and improves environmental health management). If these issues are not addressed the same problems will continue to reoccur even if a new plan process is introduced.

In regards to iwi authority plans, central government could provide more national guidance and planning tools to Maori to assist them with preparing planning documents. This is the same kind of guidance that local government has asked for to address its issues in planning and plan quality consistency over different jurisdictions.\textsuperscript{1504} Education tools could be offered to both Maori and local government to improve the quality of plans overall. The Ministry for the Environment would be the

\textsuperscript{1501} Waitangi Tribunal \textit{Ko Aotearoa Tenei: A Report into Claims concerning New Zealand Law and Policy Affecting Maori Culture} (Wai 262, 2011) at 266.
\textsuperscript{1502} Waitangi Tribunal \textit{Ko Aotearoa Tenei: A Report into Claims concerning New Zealand Law and Policy Affecting Maori Culture} (Wai 262, 2011) at 281.
\textsuperscript{1503} Waitangi Tribunal \textit{Ko Aotearoa Tenei: A Report into Claims concerning New Zealand Law and Policy Affecting Maori Culture} (Wai 262, 2011) at 281.
\textsuperscript{1504} See discussion in \textit{Central Government Environmental Health Functions} Chapter.
perfect body to undertake this role (as the delegation of some of their role to the EPA allows them to concentrate on a neutral education role). While this will result in increased cost and the need to provide more expert assistance, the cost could be absorbed by central government as a necessary education cost for both local government and iwi authorities.

This would enhance the skill sets of both parties and their approaches to environmental health matters.

8.2.5 Enabling Maori Participation

The LGA states that Maori must be provided with the opportunity to contribute to the decision making process. 1505 Similarly the NZPHDA provides that Maori must be given the opportunity to contribute to Maori health improvement. 1506 The resulting obligation on government to create consultation groups and boards provides Maori with the opportunity to have significant influence in environmental health management.

Two recent and important examples which reflect how this can be done include the Maori Advisory Committee (established under the Environmental Protection Authority Act 2011 1507) and the Auckland Council’s Independent Maori Statutory Board (established under the Local Government (Auckland Council) Act 2009 1508). The functions and powers of each board can be examined to ascertain their effectiveness and whether each model should be encouraged as a mode of supporting Maori participation.

Maori Advisory Committee

The Maori Advisory Committee replaced the advisory body “Nga Kaihautu Tikanga Taiao” 1509 and took over its role in providing advice under the Hazardous Substances and New Organisms Act 2006 and the Environmental Protection Authority Act 2011.

In an effort to keep the committee independent from the Environmental Protection Authority (EPA), the EPA cannot appoint “one of its own members to be a member of

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1505 Local Government Act 2002, ss 14(1)(d), 75(b), 81 and sch 10, ss 8 and 35.
1506 New Zealand Public Health and Disability Act 2000, s 23(1).
1507 Environmental Protection Authority Act 2011, s 18.
1509 Which was established under the Hazardous Substances and New Organisms Act 2006 in ss 24A–24D.
the committee".1510 Between four to eight members will be appointed1511 to provide “advice and assistance…from the Maori perspective”1512 on “matters relating to policy, process, and decisions of the EPA under an environmental Act or this Act”.1513 This appears to give Maori the ability to give advice on a very broad range of matters. However this ability is restricted in that any advice given must fit “within the terms of reference of the committee as set by the EPA”1514 (who must revise the terms every three years).1515

As the terms of reference are solely at the EPA’s discretion, this potential means that the Maori Advisory Committee only has a limited ability to provide opinion. This artificial limitation seems unnecessary considering the Committee is purely advisory and does not have the power to make recommendations or give orders to the EPA. Accordingly there would be no threat if the Committee gave its opinion on any matter under the Act as it remains non-binding. However the government has specifically chosen to narrow down the consultative powers of Maori and have allowed the EPA to set limits on Maori advice with its terms of reference. This is a significant watering-down of Maori consultation compared to previous legislation.1516

Independent Maori Statutory Board (Advisor to the Auckland Council)

The Independent Maori Statutory Board is completely independent of the Auckland Council and mana whenua groups.1517 Its general functions include putting together a “schedule of issues of significance” to Maori,1518 providing advice to the Auckland Council on matters affecting Maori,1519 and working with the Council to create documents which “implement the Council’s statutory responsibilities”1520 towards Maori in the region. In carrying out these roles the Board has broad powers to consult with other parties and seek advice.1521

1510 Environmental Protection Authority Act 2011, s 18(3).
1511 Environmental Protection Authority Act 2011, s 18(2).
1512 Environmental Protection Authority Act 2011, s 19(2).
1513 Environmental Protection Authority Act 2011, s 19(1).
1514 Environmental Protection Authority Act 2011, s 19(2).
1515 Environmental Protection Authority Act 2011, s 20.
1517 Local Government (Auckland Council) Act 2009, s 82(2).
1520 Local Government (Auckland Council) Act 2009, s 84(1)(e).
1521 Local Government (Auckland Council) Act 2009, s 86.
In comparison to the Maori Advisory Committee (MAC) the Independent Maori Statutory Board (IMSB) provides significant opportunity for Maori participation. First, the ability of the MAC to give advice is restricted by providing advice within the terms of reference set by the EPA. The IMSB enjoys much broader powers and can give advice on any matters, with the only covenant being that the matters affect Maori within the region. Secondly, the IMSB is well supported financially and it has broad abilities to gather advice from other parties to inform its opinions.

However the most significant difference is the consideration provided to the advice that is given. In regards to the MAC it is at the EPA’s discretion to follow the advice, the only requirement is that consultation takes place. In contrast, the Auckland Council’s duties expressly include taking into account the IMSB’s advice on ensuing Maori are reflected in the Council’s “strategies, policies and plans”, and “taking into account the board’s advice on other matters”. This change from a discretionary consideration to a mandatory consideration is significant with the IMSB having the opportunity to have a significant influence by making recommendations that must be taken into account by the Auckland Council.

The IMSB provides a positive vehicle for Maori participation and contribution and provides a good model for future council interaction with Maori. However both the MAC and IMSB may be negatively affected by the removal of “cultural well-being” from the purpose of local government in the Local Government Act 2002 Amendment Act 2012. While the exact impact of this change is still unknown, the removal of local government’s consideration for cultural well-being may mean that where there are conflicting views between the IMSB and the Auckland Council, the Auckland Council may be more inclined to rely on the purpose section as a valid reason to decline a IMSB suggestion.

8.2.6 Consideration of Maori interests

The key consideration for Maori interests under the RMA is contained in part II of the Act, primarily in ss 6(e), 7(a) and 8. Section 6 refers to matters of national importance that all parties exercising functions or powers under the Act must have regard to, with

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one of these matters being “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga”. Section 7 provides further matters that parties should “have particular regard to” which includes kaitiakitanga, while s 8 provides for the principles of the Treaty to be “taken into account”. The hierarchy of considerations means that ss 6 to 8 are subordinate to the paramount concern of “sustainable management” of physical and natural resources under s 5. However s 5 defines sustainable management as enabling parties to “provide for their social, economic, and cultural well-being and for their health and safety”.

Accordingly part 2 acknowledges the importance of recognising Maori interest in considering resource management matters while further provisions in the Act provide specifically for the use of tikanga Maori, iwi participation and consultation.

The hierarchy of part 2 considerations was discussed in Watercare Services Limited v Minhinnick with the judge concluding that a balancing judgement was required. The use of part 2 considerations in considering the overall purpose of the Act (sustainable management) was considered in 2002 in McGuire v Hastings District Council with the judge stating that in achieving the purpose of the Act “the authorities concerned are bound by certain requirements and these include particular sensitivity to Maori issues”.

The importance of Maori considerations were again emphasised in Ngati Maru Iwi Authority v Auckland City Council which declared consideration of s 6(e), 7(a) and 8 as being part of “proper administration of the RMA” and Living Earth Limited v Auckland Regional Council which repeats Lord Cooke’s view from McGuire that

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1524 This issue is discussed further in chapter 9, Proposed Solutions and Reforms.
1525 Resource Management Act 1991, s 6(e).
1530 Watercare Services Limited v Minhinnick [1998] 1 NZLR 294 (CA) at 305.
1534 HC Auckland, AP 18/02, 7 June 2003.
1535 Ngati Maru Iwi Authority v Auckland City Council HC Auckland, AP 18/02, 7 June 2003 at 23.
1536 NZEnvC Auckland, A126/06, 4 October 2006.
sees consideration of Maori as “strong direction to be borne in mind at each stage of the planning process”.1538

In 2010 this stance was again approved by the courts in *Clevedon Cares Inc v Manukau City Council*1539 however here the judge provided a cautionary warning that care must be taken to “avoid ‘double counting’ of the Maori issues provided for in ss 6(e), 7(a) and 8.”1540

Rather than this being a criticism of the sections, this merely reflects that several other sections in the RMA also refer to the importance of Maori relationship with lands, water, and taonga or matters of significance to Maori. For example when preparing coastal policy statements,1541 regional policy statements,1542 or regional plans, these documents must include reference to any issues of significance to Maori. This allows for the Maori perspective to be included in the planning documents and therefore taken into consideration when making any decisions under the Act. The quality of the consideration however does depend on the quality of the drafting of the documents.

This theme of specific acknowledgment of Maori and their relationship with their “lands, water, sites, wahi tapu or taonga” is not unique to the RMA but is also found in other core environmental health legislation.1543 The government has provided for this acknowledgement in fulfilment of their obligations under the treaty principles for active protection and kaitiakitanga.

### 8.2.7 Provision of Information to Maori

To enable Maori to contribute to decision making it important that they are kept informed of any change to plans, provisions or policies that may affect their interests. Parliament has made provision for this by ensuring that Maori are provided with copies of these various documents to aid in consultation. The onus is on both central and local government to provide tangata whenua in different areas (often through iwi authorities)

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1538 *Living Earth Limited v Auckland Regional Council* NZEnvC Auckland, A126/06, 4 October 2006 at [273].
1540 Thomson-Reuters-Brookers Online Commentary, Resource Management Section A6.09 “Maori Interests”.
with copies of proposed pest management strategies,\textsuperscript{1544} joint committee proposals,\textsuperscript{1545} local authority proposed policy statements or plans,\textsuperscript{1546} orders in council\textsuperscript{1547} and various Ministerial discussion documents.\textsuperscript{1548}

8.2.8 Acknowledgement of Tikanga Maori

In recognising Maori interests Parliament has been consistent across all core environmental health legislation in ensuring that matters, proceedings, hearings or boards of inquiry are all carried out with regard to tikanga Maori.\textsuperscript{1549} Appointment of members to boards or commissions is often conditional on having “knowledge or expertise in tikanga Maori”.\textsuperscript{1550} In the health and disability sector members also undergo training in tikanga Maori and boards are required to keep records to demonstrate that training has been completed.\textsuperscript{1551}

8.3 HEALTH STRATEGIES AND ACTION PLANS

Another avenue that allows for effective Maori influence is the use of health strategies and action plans focused on Maori health initiatives.

The New Zealand Health Strategy and the New Zealand Disability Strategy,\textsuperscript{1552} which outline central government’s key goals and objectives for health management of Maori and non-Maori populations, is supported by He Korowai Oranga: Maori Health Strategy,\textsuperscript{1553} which provides for a specific Maori focussed framework in health. The Maori Health Strategy is supplemented by Whakatataka Tuarua\textsuperscript{1554}, a Maori Health Action Plan providing details for how the Maori Health Strategy will be implemented, and more specifically how the Maori Health Action Plan may be used to “reduce health

\textsuperscript{1544} Biosecurity Act 1993, s 78(3).
\textsuperscript{1545} Local Government Act 2002, s 12(3)(vii)&(Viii).
\textsuperscript{1546} Resource Management Act 1991, sch 1, s 5.
\textsuperscript{1547} Resource Management Act 1991, s 154.
\textsuperscript{1548} Conservation Act 1987, s 26ZZ.
\textsuperscript{1550} Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 14(1)(d), Waste Minimisation Act 2008, s 93(5)(f), Local Government Act, s 33(2)(a), Environmental Protection Authority Act 2011, ss 9(3) and 9(10) and Resource Management Act 1991, s 149K.
\textsuperscript{1551} New Zealand Public Health and Disability Act 2000, ss 3(1)(b), 5(3)(c) and 22.
\textsuperscript{1552} These two strategies are discussed in chapter five Central Government Functions and chapter six Local Government Functions.
\textsuperscript{1553} Ministry of Health He Korowai Oranga – Maori Health Strategy (Ministry of Health, Wellington, 2002).
inequalities between Maori and non-Maori”.\textsuperscript{1555} This reference to reducing health inequalities is an important focus of health based legislation with the purpose of the NZPHDA making direct reference to “reducing health disparities and improving health benefits for Maori”.\textsuperscript{1556} While the original Health Act 1956 makes no direct reference to Maori, the Public Health Bill amends this, stating the purpose of the Act includes helping “attain optimal and equitable health outcomes for Maori and all other population groups”.\textsuperscript{1557}

This is also reflected at DHB level where a DHB provides for Maori in its planning documents and reports on the issue in their statements of intent. An example of this is the Auckland DHB Statement of Intent 2012/2013.

\textbf{8.3.1 Auckland District Health Board}

In explaining its operating environment the DHB acknowledges the Treaty principles of “partnership, participation and protection”.\textsuperscript{1558} These principles are reflected at central government level through statutory requirements in the NZPHDA\textsuperscript{1559} and through the Ministry of Health’s “He Korowai Oranga – the Maori Health Strategy”.

In fulfilling participation requirements the DHB established a “Memorandum of Understanding”\textsuperscript{1560} with local iwi\textsuperscript{1561} outlining “principles, processes and protocols” for working “together at governance and operation level”\textsuperscript{1562}, including the introduction of a “Whanau Ora” approach.\textsuperscript{1563}

The practical effect of the Memorandum of Understanding, and the establishment of a Maori Health Advisory Committee, is an increase in consultation and Maori input into health planning and provision of services. The recognition of rangatiratanga and

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\textsuperscript{1556} New Zealand Public Health and Disability Act 2000, ss 3(1)(b).
\textsuperscript{1557} Public Health Bill 2006, s 3(1).
\textsuperscript{1558} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 28 June 2012) at 4.
\textsuperscript{1559} New Zealand Public Health and Disability Act 2000, s 23(1)(d) & (e).
\textsuperscript{1560} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 28 June 2012) at 4.
\textsuperscript{1561} Te Runanga o Ngati Whatua.
\textsuperscript{1562} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 28 June 2012) at 4.
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kawanatanga\textsuperscript{1564} has led to the Auckland DHB working with other DHBs in an attempt to create a “cross-DHB Maori health equity framework”.\textsuperscript{1565} Observance of Maori custom has also been built into the provision of health services through a “Tikanga Best Practice Policy”.

The implementation of the policies is provided for the Auckland DHB’s Maori Health Plan 2011-2012\textsuperscript{1566} which contains several key initiatives or goals aimed at improving Maori health. Each of these initiatives provide opportunities for Maori to influence environmental health management in a positive manner.

For example, the Auckland DHB recognises an “under-representation of Maori in the DHB workforce” and intends to address this through increasing Maori participation through workforce development programmes and increased career pathways.\textsuperscript{1567} This is similar to approaches taken in the Bay of Plenty to increase the number of Maori in the environmental health workforce.

The Auckland DHB also recognises that an effective system will not only rely on coordination between government and Maori but also across other government departments and DHBs in other regions. Accordingly the Auckland DHB plans on working with the Waitemata DHB to develop a “joint Maori Health Strategy for 2011 – 2014”.\textsuperscript{1568} The use of a joint “operational environment” will aid effective Maori health management and contribute to the emerging collaborative approach of government.\textsuperscript{1569}

This collaborative approach is continued in the third initiative of implementing a Whanau Ora approach.

\section*{8.3.2 Whanau Ora}

The introduction of Whanau Ora in 2010 encouraged an integration of services across health and other sections for an interdisciplinary approach to empowering whanau (families) in well-being and decision making.

\textsuperscript{1563} An approach based on empowering whanau (families) in decision making and reducing health inequalities.
\textsuperscript{1564} Principles of sovereignty (rangatiratanga) and governance (kawanatanga).
\textsuperscript{1565} Auckland District Health Board \textit{Statement of Intent 2012/2013} (Auckland District Health Board, Auckland, 28 June 2012) at 5.
\textsuperscript{1566} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011).
\textsuperscript{1567} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011) at 32.
\textsuperscript{1568} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011) at 37.
\textsuperscript{1569} Auckland District Health Board \textit{Maori Health Plan} (Auckland District Health Board, Auckland, 2011) at 37.
The collaborative Whanau Ora approach is a positive change in health management which allows for Maori influence and self-determination in health while bringing various agencies together in a network joining health and social services. The Whanau Ora Governance Group is “responsible for overseeing the implementation of Whanau Ora”\textsuperscript{1570} and provides advice to the Minister for Whanau Ora, Hon Tariana Turia (Co-Leader of the New Zealand Maori Party).

In September 2012 the Ministry of Health published a performance report on Whanau Ora.\textsuperscript{1571} Using a series of health statistic indicators to measure Maori health against the health of other communities, the Ministry acknowledged an improvement and a reduction in health disparities including marked improvements in smoking cessation, vaccinations and access to general health services.

8.4 WHAT CHANGES ARE REQUIRED (IF ANY) TO PROVIDE FOR APPROPRIATE ACCOMMODATION OF MAORI INTEREST IN ENVIRONMENTAL HEALTH MANAGEMENT?

In February 2013 the Ministry for the Environment released a discussion document seeking consultation on improving New Zealand’s resource management system.\textsuperscript{1572} The discussion document included proposed approaches to improve the effectiveness of Maori participation in resource management planning.\textsuperscript{1573} Here central government accepted the fact that the current consultation system is hindered by “differing expectations”\textsuperscript{1574} between government and Maori and that the “confusion” over the role of Maori has resulted in uncertainty and unnecessary expense and court proceedings.\textsuperscript{1575}

\textsuperscript{1570} Whanau Ora Fact Sheet, Poutu-te-Rangi (March 2013).
The proposal aims to address this by clarifying the process for Maori consultation and improving the “existing tools” used in the RMA.\footnote{1576 Ministry for the Environment \textit{Improving our Resource Management System: A Discussion Document} (Ministry for the Environment, Wellington, 2013) at 67.} In keeping with the requirements under s 35A (which requires local authorities to keep records of iwi and hapu), the onus is placed on local authorities to establish an arrangement “that gives the opportunity for iwi/Maori to directly provide comprehensive advice during the development of plans”,\footnote{1577 Ministry for the Environment \textit{Improving our Resource Management System: A Discussion Document} (Ministry for the Environment, Wellington, 2013) at 66.} however existing arrangements (under s 35A or Treaty of Waitangi settlements) may also be acceptable.

As to when consultation should occur, the proposal envisages local authorities will use these “arrangements” with Maori to consult and gather advice prior to local authorities making any decisions on submissions. The discussion document states that this advice (provided by Maori) is to have “statutory weight under the RMA”.\footnote{1578 Ministry for the Environment \textit{Improving our Resource Management System: A Discussion Document} (Ministry for the Environment, Wellington, 2013) at 66.} This could have a positive effect on Maori influence depending on what “statutory weight” is afforded to the advice.

For example, the current system arguably already gives Maori advice statutory weight under the RMA by providing for consultation to take place. The key problem is that, under the current system, it is left to Ministerial discretion if the advice is followed or incorporated (although local authorities are directed to give advice “due consideration”).\footnote{1579 Local Government Act 2002, s 82(1)(e).} Unless the statutory weight is strengthened (or at least amended to ensure that both central and local government are to give the advice “due consideration”) this change is unlikely to have any real effect.

### 8.4.1 Changes to Iwi Management Plans

A more encouraging proposal involves introducing a requirement for local authorities to “develop single resource management plans”.\footnote{1580 Ministry for the Environment \textit{Improving our Resource Management System: A Discussion Document} (Ministry for the Environment, Wellington, 2013) at 66.} This may provide an excellent opportunity to address some of the problems discussed above including the under utilisation of the iwi authority planning document mechanism. Incorporating further reference to Maori and Maori interests within one single resource management plan...
may improve the “awareness and accessibility” of these iwi plans.\textsuperscript{1581} As discussed earlier in this chapter, there is no consistency in the existing iwi management plans and no current national direction as to content and format. Both the Waitangi Tribunal and the Crown have expressed strong viewpoints as to the causes of these issues and how to best address them.

The 2013 proposal is a positive step reflecting that the Crown has heard the concerns of the Waitangi Tribunal and is attempting to address them. The proposal provides that changes in legislation will be introduced to set out “expectations on the structure, minimum content and lodgement process”.\textsuperscript{1582} This increased national direction will provide uniformity and make the plans easier to use, while proposals to lodge the plans online make them more accessible. These changes address several of the Waitangi Tribunal concerns (provided that education is also provided to assist the development of these plans as discussed above). However, the issue of funding would still need to be addressed. Maori cannot be expected to provide comprehensive documents unless they have the education and financial resources to put the plans together.

\textbf{8.4.2 Increasing the Utilisation of Joint Management Agreements and the Delegation of Power to Iwi Authorities}

A further government proposal, of relevance to Maori participation in environmental health management, involves improving the legislation around joint management agreements and delegation of responsibilities under the RMA to ensure greater utilisation of these tools.\textsuperscript{1583}

Under s 33 of the RMA local authorities are able to transfer powers to another public authority. This includes transferring powers to an iwi authority (who are defined as a public authority under this section).\textsuperscript{1584} Section 36B of the RMA provides local authorities with the power to make “joint management agreements” and include iwi authorities (relevant to the community) as parties to the agreements. This is subject to

\textsuperscript{1584} Ministry for the Environment \textit{Improving our Resource Management System: A Discussion Document} (Ministry for the Environment, Wellington, 2013) at 67.}
the iwi authority (or other party) having the “technical or special capability or expertise to perform or exercise the function, power or duty jointly with the local authority”. 1585

Both these provisions could have a significant impact on Maori and their ability to influence environmental health management by providing iwi authorities with the opportunity to be heavily involved in management.

In a 2011 Waitangi Tribunal report, 1586 the Tribunal stated that both sections were valuable tools in allowing Maori to carry out roles of kaitiakitanga (guardianship) by allowing them to exercise control over taonga, or resources in the environment. 1587 However the Tribunal argued that both clauses were poorly designed and rarely used.

In regards to s 33 (delegation of powers) the Tribunal stated that the provision was “complex and cumbersome” 1588 as local authorities are required to use “special consultative procedure…designed for the most significant decisions” prior to delegation. 1589 The Tribunal accused the section of being “weighted against transfer”. 1590 Alternatively the Crown argued that while some iwi had been unsuccessful in petitioning for delegation to occur, the lack of delegation under the section resulted from “unrealistic demands” and a lack of understanding and capacity of Maori to undertake the delegation. 1591 This lack of capacity argument was “emphatically rejected” by the Tribunal who argued that any inability to carry out a role was likely to be from a lack of resources and adequate support.

Section 36B has been subject to similar criticism from the Waitangi Tribunal as it has only been used once since its introduction to create a joint management agreement between Ngati Tuwharetoa and Taupo District Council. The joint management agreement that resulted, while a promising use of the section, appears conservative in

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1584 Resource Management Act 1991, s 33A.
1591 Waitangi Tribunal Ko Aotearoa Tenei: A Report into Claims concerning New Zealand Law and Policy Affecting Maori Culture (Wai 262, 2011) at 266.
nature applying in limited circumstances and providing an uneven balance of power weighted towards the Council. For example, if a joint committee is held (with two members from each side) and an agreement cannot be reached the Council has the ability to appoint a fifth chairperson who “has a casting vote in the event of a split vote”. 1592

Nonetheless there are several examples of successful Maori and Government environmental co-governance, primarily involving legislative co-governance models following Treaty of Waitangi settlements. These include the Te Arawa and Taupo Lakes partnerships agreement1593 in 2006 and the Waikato River co-governance model1594 in 2010. The four years between the settlements has resulted in a significant difference in the governance afforded to Maori. In the Te Arawa settlement the lakes belong to the Te Arawa Lakes Trust with a focus on sustainable management and the ability of Te Arawa to assert kaitiakitanga. However the trust is subject to various restrictions. Recreational use and existing consents may continue and the trust cannot withhold consent for new applications “unreasonably”1595 meaning arguably that true power has remained with the Crown.

In contrast, management of the Waikato River is carried out by the Waikato River Authority. This statutory body consists of an equal number of members from both Maori and the Crown. The Waikato River Authority has the ability to create an Integrated River Management Plan which (like an iwi management plan) must be recognised by local authorities1596 and given “regard to” by “consenting authorities exercising resource consent functions”.1597 While this co-governance arrangement is certainly promising it is still in its infancy and accordingly its effectiveness is unproven. However any arrangement that encourages co-governance could be a useful tool in the future for providing Maori influence.

1596 Waikati-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 40(1).
1597 Waikati-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 40(2).
The Ministry for the Environment's 2013 proposal plans to address the underutilisation of these two tools by amending the sections to make them “easier to be used for enabling iwi participation”. What this will actually achieve will depend on the wording of the individual section. The current wording of both sections does not appear too restrictive and only provides the reasonable limitation that parties must have the expertise to perform the tasks they are delegated (or a party to) and that the iwi authority must be representative of the community. Both these restrictions are necessary to ensure quality and do not appear to hinder local authorities in deciding to enter joint management agreements or delegate powers.

Instead, it appears that it is not the wording of the Act that causes the apparent reluctance of local authorities to exercise these functions. Accordingly, unless the amendments provide more incentive for local authorities to act on these powers it is unlikely that much change will occur.

### 8.4.3 Encouraging Maori and Local Government to work together with cooperative models

In the absence of co-governance models there have been many successful situations where Maori have worked with local authorities so that an environmental health solution was workable (and agreed to by both parties). An example of this is the “Te Riu o Hokianga” project, a combined project where the Institute of Environmental Science and Research (ESR) and Hokianga Health Enterprise Trust (HHET) worked together with local hapu and iwi to address environmental health issues with failing sewage treatments and waste disposal systems on local marae. The success of this project suggests that this model could be adopted in other regions to provide for Maori influence and participation in environmental health management while ensuring the success of any proposal, with local community “buy-in” and support.

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In keeping with tikanga Maori a “multi-agency hui” was used with representatives from “district and regional councils, independent engineers, funders and hapu”. The purpose of the hui was to work together and create a “tool” to help Maori reach a council accepted approach to wastewater management.

Both Maori and local government agreed there was a problem with the wastewater facilities on maraes in the area. Systems struggled to deal with the influx of people during different events and frequently failed. The resulting sewage overflow put drinking water and food supplies at risk of contamination and increased the risk of infectious diseases.

While local government were legally entitled to insist on enforcing legislative measures, this contradicted with the government’s commitment to work with Maori and incorporate Maori perspectives. Accordingly a workable solution between both parties was sought. In order to reach agreement the difference in perspectives between Maori and local government needed acknowledgement.

The method of waste management chosen can create conflict between local government and Maori. Local government views this as a scientific process, considering which system will be the most effective given the population size and use of the system. Often water-based sewerage disposal systems are preferred and are predominately used. However this westernised approach of waste discharge directly into water is in direct conflict with Maori beliefs. The Maori world view (as discussed earlier in this chapter) traditionally favours land based waste disposal options where the earth (Papatuanuku) has a cleansing effect on the waste prior to it being discharged into water.

Waste management systems on marae are also used differently to other commercial entities or community institutions, (which they are grouped with under resource

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1600 A Ahuriri-Driscoll, J Foote, M Hepi, M Leonard Where the Rubber Hits the Road less Travelled: Bridging Technical and Cultural Understandings of Marae on-site Wastewater Treatment and Disposal (Institute of Environmental Science and Research (ESR) Ltd, Christchurch, 2009) at 1.
1601 A Ahuriri-Driscoll, J Foote, M Hepi, M Leonard Where the Rubber Hits the Road less Travelled: Bridging Technical and Cultural Understandings of Marae on-site Wastewater Treatment and Disposal (Institute of Environmental Science and Research (ESR) Ltd, Christchurch, 2009) at 2.
1603 A Ahuriri-Driscoll, J Foote, M Hepi, M Leonard Where the Rubber Hits the Road less Travelled: Bridging Technical and Cultural Understandings of Marae on-site Wastewater Treatment and Disposal (Institute of Environmental Science and Research (ESR) Ltd, Christchurch, 2009).
management legislation). It is hard to estimate the number of users of a marae wastewater system. Marae may have limited people attend on a day-to-day basis but during large gatherings the waste management system must be capable of taking the sudden shock of high intensity usage. Accordingly the system must be able to cope with these fluctuations.

This change in usage is not present in other commercial facilities or community institutions used by local government for comparison. They do not have this unique pattern of use. Comparison makes it difficult for local government to decide which system is necessary to satisfy building and resource consents. It would be cost-prohibitive and impractical to expect a marae to provide facilities based on the maximum number of people who may visit a marae at any one time. Similarly, basing capacity on the usual number of people at the marae (which may be very small) would also be ineffective. To create an effective system local government needs to work together with Maori to determine a capacity which serves local hapu and allows for influxes (with the addition of temporary facilities where necessary).

Ideally, the complexity and cost of the waste management system chosen will also take into account the realities of a marae, its location, its population makeup and finances. While local government view marae as a “building structure” Maori see it as a cultural necessity. Marae are often in rural or remote locations with maintenance of marae facilities undertaken by kaumatua or marae volunteers. Accordingly any chosen system must be straightforward to allow for simple maintenance without complicated replacement parts. Otherwise any system will eventually breakdown leading to leakage, potential pollution and spread of disease, or a reversion to other practices without council approval. This creates a tension between local government and Maori as to who determines the appropriateness of a system. Maori favour hapu participation in selection and local government take a technical approach to building and resource consents.

In the Hokianga, if local government wanted compliance and an effective model of waste management it had to acknowledge that local Maori were more concerned about preserving local tikanga Maori (custom) than complying with regulation. This issue was raised during the hui with hapu members admitting that “we don’t want to
compromise tikanga for regulations. Compliance versus tikanga is a real issue for our people”.1604

At face value, legislation controlling wastewater systems appear heavily weighted towards local government discretion. Several different acts are responsible for providing regulatory powers. The Health Act 1956 provided the core framework for health and places the onus on local authorities to provide sanitary works.1605 Through the RMA regional plans are used to regulate system design and implementation and under the Local Government Act 2002 territorial authorities have bylaw making powers to regulate onsite waste water disposal and waste management.1606

However, irrespective of the legal powers of local government, here local government recognised that for any workable system to be successfully enforced, a cooperative model would have to be adopted.

This joint cooperative approach is also supported by legislation. The purpose of local government is to “promote the social, economic, environmental, and cultural well-being of communities”.1607 This reference to cultural well-being is again emphasised in the RMA where the purpose of the Act provides for the “sustainable management” of natural and physical resources in a manner which “enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety”.1608 Accordingly, a cooperative approach with Maori which provided for sanitation control while recognising cultural well-being is well in keeping with legislative requirements.

Chapter 9, Proposed Solutions and Reforms, discusses the purpose of local government in more detail, examining the potential impact of the Local Government Act 2002 Amendment Bill 2012 which aimed to remove references to environmental and cultural

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1604 A Ahuriri-Driscoll, J Foote, M Hepi, M Leonard Where the Rubber Hits the Road less Travelled: Bridging Technical and Cultural Understandings of Marae on-site Wastewater Treatment and Disposal (Institute of Environmental Science and Research (ESR) Ltd, Christchurch, 2009) at 6.
1605 Health Act 1956, s 25.
1606 Local Government Act 2002, s 146(a)(i)&(ii).
1607 Local Government Act 2002, s 10. Note references to social, economic, environmental and cultural well-being were being removed from the purpose of local government by the Local Government Act 2002 Amendment Bill 2012 which is discussed further in chapter 9, Proposed Solutions and Reforms. This Bill has since been passed into legislation after the date of this thesis.
well-being from the purpose of local government.\textsuperscript{1609} While the impact on Maori and their influence is uncertain, the reference to environmental and cultural well-being in the RMA still strongly supports adopting processes that support cultural well-being and encourage Maori participation and contribution.

Overall, the Te Riu o Hokianga project provided a vehicle for local authorities and Maori to broker a working relationship. Key requirements for the relationship included addressing funding issues, encouraging coordination, incorporating the marae’s unique dynamic into system planning and recognising tapu and tikanga Maori issues around sewage disposal.\textsuperscript{1610} This resulted in meaningful dialogue between Maori and local government. The successful cooperation has resulted in several new disposal systems in the area and the provision of funding.

Ministry for the Environment representatives involved in the project noted the success and have suggested the adoption of the hui and cooperative process in other regions. The adoption of this system in other areas would allow for “integration of cultural and technical understandings” and encourage Maori to engage with local government to reach meaningful solutions.

\subsection*{8.4.4 Encouraging Maori into the environmental health workforce}

Maori involvement in environmental health is not a new concept. As seen earlier in this chapter, tohunga carried out a traditional “environmental health” role in enforcing a general code of conduct to identify environmental health hazards and avoid harm. This role was later replaced with the introduction of central and local government regulations and the introduction of medical officers of health and environmental health officers. The first Maori medical officer of health, Maui Pomare, was appointed in 1901.\textsuperscript{1611} Pomare’s role involved assessing Maori villages, determining the causes of ill health and looking at the prevention of disease by improving environmental conditions, including water supply, drainage and sewerage. Pomare’s approach included collaboration with iwi with several Maori leaders being appointed as “Maori Sanitary

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\textsuperscript{1609} This Bill has passed after the date of this thesis.

\textsuperscript{1610} A Ahuriri-Driscoll, J Foote, M Hepi, M Leonard Where the Rubber Hits the Road less Travelled: Bridging Technical and Cultural Understandings of Marae on-site Wastewater Treatment and Disposal (Institute of Environmental Science and Research (ESR) Ltd, Christchurch, 2009) at 9.

\end{tt}
\end{footnotesize}
Inspectors”. These inspectors were responsible for “monitoring environmental health, housing, infectious diseases, vaccination and the activities of tohunga”.\textsuperscript{1612} Maori sanitary inspectors required no formal training or education in environmental health\textsuperscript{1613} (though Pomare ran various training courses from 1907),\textsuperscript{1614} however they were generally respected community leaders, appointed for their knowledge of their Maori communities and the issues they faced.\textsuperscript{1615} These inspectors were burdened with low wages and little support. Between 1909 and 1911 the Minister of Health carried out several initiatives where Maori health inspectors were largely dismissed or superseded by European sanitary inspectors (with environmental health training) and district health nurses.\textsuperscript{1616}

Prior to their replacement, the Maori health inspectors had been very successful in their local communities (despite their lack of funding).\textsuperscript{1617} The involvement of Maori in managing environmental health in their own communities was an innovative approach which addressed the Maori Council’s concerns that non-Maori inspectors lacked understanding of Maori culture and caused “unnecessary friction”.\textsuperscript{1618}

Current legislation and strategies recognise the importance of Maori involvement in environmental health. In the Local Government Act 2002, schedule 7, cl 36 provides that a local authority must be a “good employer”.\textsuperscript{1619} In defining “good employer” the Act states that “good employers” will operate a “personnel policy”\textsuperscript{1620} which would include provisions recognising “the need for greater involvement of Maori in local government employment”.\textsuperscript{1621}

This encouragement of Maori employment in the sector is consistent with the Maori Health Strategy “He Korowai Oranga” which recognises that both Maori and the

\textsuperscript{1612} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 125.
\textsuperscript{1613} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 127.
\textsuperscript{1614} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 127.
\textsuperscript{1615} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 127.
\textsuperscript{1616} (3 August 1911) 154 NZPD 155 and (9 August 1911) 154 NZPD 305.
\textsuperscript{1617} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 126.
\textsuperscript{1618} Derek A Dow \textit{Maori Health and Government Policy 1840-1940} (Victoria University Press, Wellington, 1999) at 126.
\textsuperscript{1619} Local Government Act 2002, sch 7, s 36.
\textsuperscript{1620} Local Government Act 2002, sch 7, s 36(2).
\textsuperscript{1621} Local Government Act 2002, sch 7, s 36(2)(d)(iii).
government, as treaty partners have a role in “promoting Maori health”\textsuperscript{1622} and this includes contributing to the environmental health workforce.

However, despite these provisions, and those discussed previously on Maori representation on committees and boards there is still only a small number of Maori working in front line services as medical officers of health or environmental health officers.\textsuperscript{1623}

The Bay of Plenty District Health Board have attempted to rectify this problem by actively encouraging Maori into the environmental health workforce. The DHB has recognised that few Maori are entering environmental health training despite the offers of scholarships or other incentives. There is also no formal “indigenous environmental health strategy”\textsuperscript{1624} for providing consistency across public health units as to how Maori are recruited into environmental health employment. This issue is further compounded by Maori iwi taking a greater role in controlling environment and resources (through various treaty settlements) and struggling to deal with environmental health implications, but feeling reluctant to “re-engage” with government by collaborating with local government.\textsuperscript{1625}

The Bay of Plenty DHB has addressed many of these issues by encouraging Maori to become actively involved in environmental health workforce roles prior to the completion of formal training. Like Maui Pomare and the first appointed Maori health inspectors, the DHB aims to encourage those who currently have leadership positions in iwi or interests in kaitiaki (guardianship) and put them into practical training programs. Maori can then train as they work alongside the council allowing them to utilise existing cultural skills and combine these with environmental health knowledge. This initiative has been accompanied by a new business structure called “He Pou Oranga Tangata Whenua”\textsuperscript{1626} which creates a framework recognising how the DHB can adopt a collaborative approach working with iwi authorities, Maori health service providers and

\textsuperscript{1626} Bay of Plenty District Health Board \textit{He Pou Oranga Tangata Whenua} (Bay of Plenty DHB, Bay of Plenty).
iwi to create a system which provides for Maori to be active participants and providers in health and environmental matters.\footnote{1627 Bay of Plenty District Health Board Maori Health Runanga, Te Runanga Hauora o Te Moana a Toi He Pou Oranga Tangata Whenua: Tangata Whenua Determinants of Health Framework (Bay of Plenty DHB, Bay of Plenty, March 2007).}

This is a positive step in environmental health management as further involvement with Maori will ensure future Maori support for environmental health initiatives and increase the success of these initiatives. Similar programmes of on-the-job training, and the utilising of Maori with cultural and communication skills in environmental health positions could be extended to other DHB’s to encourage Maori participation and fulfilment of the Treaty principle of active protection.

### 8.5 CONCLUSION

While Maori may desire further changes if they perceive the current system lacking, the question remains whether any of these changes can be considered necessary in order to improve the effectiveness of environmental health management in New Zealand. Parliament has provided strong indications throughout legislation that Maori interests must be acknowledged and that Maori must be enabled to participate in decision making and contribute to both health and resource management practices.

While Maori may believe the current consultation provisions do not go far enough, there is a plethora of provisions which provide ample opportunity for Maori to make submissions on proposed plans and reforms. The use of advisory boards also provides opportunity for Maori to take an active role.

There are several proposed changes or ideas which are both supportive of Maori and beneficial to New Zealand’s environmental health framework. First is the idea supported by the Waitangi Tribunal of increasing national direction through central government providing national policy statements and national environmental standards. This provides national consistency and certainty for both Maori and other parties involved in the environmental health system (as discussed in previous chapters).

Aiming to increase the use of Maori advisory committees (as well as other advisory committees) would also have a positive impact on environmental health as it allows for
community participation and “buy-in” into projects. The Auckland Council’s Statutory Maori Advisory Board is an innovative approach to ensuring that Maori opinion is considered by the council in its planning and decision making. While it is uncertain what the impact will be of proposed changes to the purpose of local government (in amendments to the Local Government Act 2002) the Statutory Maori Advisory Board provides a useful model that could be adopted in other local authorities. As discussed above, there are other provisions that provide for acknowledgement of Maori interests including references to “cultural well-being” in part 2 of the RMA. Continuing this trend of increased coordination between parties, the interagency approach of “Whanau Ora” which brings together health, social services and government and non-government agencies to improve family well-being also demonstrates a positive shift in government approach that has positive effects on environmental health from both Maori and non-Maori perspectives.

There is a strong underlying theme of increased coordination and group participation (with national direction) which supports current proposed initiatives in environmental health. The success of these approaches is apparent in case studies such as the Te Riu o Hokianga Project. Allowing increased participation of Maori with local authorities has largely been successful due to the ability for the local Maori community to contribute to solutions and be active in self-management resulting in more efficient and effective waste management. This approach can be taken and applied in both Maori and non-Maori communities.

Increased public participation is not in direct conflict with increased national direction. If carefully planned the national direction can provide consistency in approach (including approach towards local consultation) and assist local authorities in carrying out their role. Funding remains a continual issue in these situations and if Parliament amends legislation to increase Maori participation it must also address the funding issue to allow the amendments to have any real effect.

Finally, improving the quality and consistency of iwi management plans can only have positive implications on the local authorities who apply them. Parliament has indicated an intention to clarify the processes around iwi management plans and provide tools and guidance. This would have a positive effect on the use of the plans and the quality of council decisions.
Chapter 9 - PROPOSED SOLUTIONS AND REFORMS

This chapter discusses proposed changes and reforms\textsuperscript{1628} and considers whether these changes will address the problems in the current framework outlined in earlier chapters of this thesis. This chapter is divided into two parts. The first part considers the government’s current proposed initiatives in updating and improving the environmental health framework. This includes consideration of the current government’s “better local government” reforms and current relevant bills before Parliament.\textsuperscript{1629}

The second part of the chapter will consider other proposed reforms suggested by the writer as a result of preparing this thesis.\textsuperscript{1630} These include the introduction of a national environmental health action plan and the adoption of an “Independent Environmental Health Co-ordinating Body”. Both these approaches are currently used in Australia and have been considered here with a view to adopting the same approaches.

9.1 UPDATING THE ENVIRONMENTAL HEALTH FRAMEWORK

As discussed previously, environmental health operates in a disjointed framework which is heavily reliant on the Health Act 1956 (for health provisions). The age of the statute creates issues for the framework in terms of outmoded assumptions and reliance on superceded organisational arrangements. The 1956 legislation is largely paired with the Resource Management Act 1991 (RMA) which has also required an update. Central government has recognised these issues and both areas are undergoing

\textsuperscript{1628} Excluding reforms previously discussed in chapters 5, 6 and 7.
\textsuperscript{1629} Local Government Act 2002 Amendment Bill 2012 (this bill has been passed into statute since the date of this thesis). Discussion of the Public Health Bill is located in chapter 7, \textit{Critical Analysis of Central and Local Governments’ Environmental Health Functions}. Discussion of the Food Bill is located in chapter 5, \textit{Environmental Health Functions of Central Government}.
\textsuperscript{1630} Some of these reform options are also discussed in chapter 7, \textit{Critical Analysis of Central and Local Governments’ Environmental Health Functions}.
considerable reform.\textsuperscript{1631} The RMA’s recent reforms have been aimed at simplifying and streamlining RMA processes under the Act. These reforms have focused on application processes for the consumer and standardising processes. A significant part of the reform has involved the establishment of an EPA (as discussed in chapter 5 \textit{Environmental Health Functions of Central Government}) with further changes expected in the final stage of the reforms that will finalise the exact functions and role of the EPA.

These changes have been driven largely by the current National-led government who have continued an interest in simplifying the law around local government by launching the “Better Local Government” reform. This reform includes updating the Local Government Act 2002 to address concerns over local government performance and spending. This “Better Local Government” reform project replaces the previous project spearheaded by Rodney Hide\textsuperscript{1632} entitled “Smarter Government: Stronger Communities” which focused on similar ideas.

The political interest in health reform (particularly that related to environmental health) has been comparatively slow to develop. Discussion documents were created in 2002 leading towards the drafting of the Public Health Bill in 2006 which was introduced into Parliament in 2007. Since the Bill was referred to the Health Select Committee and reported back in June 2008 (following public submissions) the Bill has languished at the end of Parliament’s order paper awaiting its second reading. Originally it was envisaged that the Public Health Bill would overtake nearly all provisions of the Health Act 1956 except for the drinking water provisions (incorporated in post 2007 changes). The Health Act 1956 would then be renamed and provide the definitive Act on drinking water. This has not occurred due to slow progression on the Bill and accordingly the Health Act 1956 continues as a unique hybrid with dated sections cobbled together with modern drinking water provisions.\textsuperscript{1633}

\textsuperscript{1631} Public health reforms are proposed in the Public Health Bill 2007 (177-2). Local government reforms are proposed in the Local Government Act 2002 Amendment Bill 2012 and further reforms are planned for 2013 (following consultation). Recent resource management reforms are contained in the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

\textsuperscript{1632} Rodney Hide was the leader of the ACT party and the Epsom Electorate Member of Parliament. The ACT party entered a coalition agreement with the National Party which resulted in Rodney Hide being awarded the Local government portfolio.

\textsuperscript{1633} Contained in Part 2A of the Health Act 1956 and inserted via s 7 of the Health (Drinking Water) Amendment Act 2007.
Ideally all reforms in the area of environmental health would be solely based on creating a more integrated system to serve the core principles of environmental health addressed in chapter two. Examining existing policies in environmental health and the environmental health of the local community would provide insight into what improvements are needed. Current initiatives could be acknowledged and integrated into a new programme. While data collected by government would largely contain an academic or scientific perspective (an objective standpoint) this could be combined with public consultation (a subjective standpoint). Providing the opportunity for effective public consultation provides public “buy-in” and support of the environmental health initiatives. This objective and subjective information could then be considered together for a comprehensive approach to improving environmental health functions. This preparation would provide the foundation for a nationalised framework which supports and facilitates the processes and provides local government with encouragement and direction.

However law reform capable of adoption must go beyond “best practice” to consider practical issues in application. Any proposed government system will always be constrained by physical practicality in addressing environmental health issues together with the need for adequate human resources to make it work. Concern for economic considerations is important. It is an unfortunate reality that the government’s ability to address an area is constrained by financial cost. While cost has always been considered in drafting legislation (at the regulatory impact statement stage) the current global financial crisis has resulted in the New Zealand government adopting a very conservative approach to spending. This is a key driving force behind the National government’s current reform (although reforms are also developed to create other positive changes in addition to economic efficiency).

9.1.1 The Ministry for Primary Industries

An example of this type of reform involves the establishment of the Ministry for Primary Industries (MPI). The MPI was created by merging the ministerial

1634 See chapter 2 of this thesis, The Meaning and Importance of Environmental Health.
1635 Ian MacArthur, Chartered Institute of Environmental Health Local Environmental Health Planning: Guidance for Local and National Authorities (WHO Regional Publications, European Series, No. 95, 2005) at 6.
1636 Ian MacArthur, Chartered Institute of Environmental Health Local Environmental Health Planning: Guidance for Local and National Authorities (WHO Regional Publications, European Series, No. 95, 2005).
1637 Launched on the 30th of April 2012.
portfolios of agriculture, forestry, biosecurity, fisheries and aquaculture together with the New Zealand Food Safety Authority. The MPI provides one body responsible for the effective and efficient management of New Zealand’s primary sector aimed at increasing “sustainable economic growth”.\footnote{Ministry of Primary Industries Website <http://www.mpi.govt.nz/about-mpi/our-organisation>.

\footnote{Central government’s main interest here was to decrease the number of government ministries thereby decreasing labour and running costs and increasing government efficiency. The reduction in the number of government employees (through the merger) created upset in the public service sector and has been criticised by opposition political parties for its lack of effectiveness. This is because the decrease in ministerial employees has been accompanied by an increase in use of private consultants which has been estimated to have cost the same amount as the perceived labour savings (or to exceed them).\footnote{See Isaac Davison “Spending on Consultants rises under National” \textit{The New Zealand Herald} (New Zealand, 11 April 2012) and Labour Party State Services spokesman Chris Hipkins “The Consultancy Blowout” (19 May 2012) Labour Party Website >http://blog.labour.org.nz/2012/05/19/the-consultancy-blowout/>. Chris Hipkins states that between 2006/07 and 2010/11 government ministry spending on consultants and contractors increased from “$336 million to $525 million”. Chris Hipkins directly linked this increased spending on consultants with the reduction in state service employees stating that the biggest increase in consultancy cost came “in National’s first year in office when they imposed their arbitrary ‘cap’ on the number of staff the public service can employ”.}


Regardless of the economic incentive for the merger, this change is supportive of the “whole-of-government” approach considered important in reducing state sector fragmentation (and beneficial for the multidisciplinary nature of environmental health).

The MPI’s “technical, scientific and necessarily apolitical nature”\footnote{Ministry of Primary Industries Website <http://www.mpi.govt.nz/about-mpi/legislation>.} makes it an ideal body to be delegated functions as a policy advisor for the government. The MPI merger provides a positive example of improving the framework to ensure an integrated strategic approach for biosecurity and the sustainable management of natural resources. The need for a fully integrated biosecurity framework became apparent in the PSA-V kiwifruit virus outbreak in New Zealand kiwifruit orchards in 2011. Consultation since the outbreak has resulted in strong support for a nationalised pest management strategy. The outbreak highlighted flaws in primary industries being managed by separate government bodies with one government body approving the importation of kiwifruit growing stock (without knowledge that the stock was at risk of carrying the virus) and
another government body having knowledge of the risk, but being unaware that any stock was being imported.\textsuperscript{1641}

The MPI’s management action plan (established as a result of an independent review into the outbreak) recognised the need to centralise the management of risks, increase transparency in what is being imported, and improve the connections between government agencies, industry and research organisations.\textsuperscript{1642} The actual establishment of the MPI is consistent with the above goals and creates the necessary vehicle for this increased coordination.

The idea of merging ministries or increasing coordination between ministries could be beneficial in environmental health. Increased coordination between parties would encourage the sharing of scientific data (such as reports back on environmental health indicators). The coordination could also increase consistency in planning documents. These benefits could filter down to local government level with more national direction or encouragement to enter collaborative multiparty agreements that in turn increase consistency, save time and reduce costs (in labour, research and resources).

This concept could also increase accountability. If individual areas are required to account to a single Ministry, more care would be taken in budgeting and in achieving targets. Comparison within the Ministry provides incentive for parties to improve their efficiency. This also creates a safeguard as any problems or deficiencies could be identified both at the individual area level and at ministerial level before results are reported back to central government. Following evaluation, sectors could learn from each other, enabling them to adopt the most effective practices and improve environmental health management.

This will only work if changes are carefully planned and orchestrated. Care must be taken to ensure targets are carefully laid out at the beginning of any mergers and that a monitoring system is enforced to ensure that goals of all individual areas are identified and prioritised (to avoid any neglect). Monitoring processes and resource allocation

\textsuperscript{1641} Ministry of Agriculture and Forestry, Biosecurity New Zealand, New Zealand Food Safety Authority PSA Pathway Tracing Report – Response Title: PSA Kiwifruit 2010-348 (MAF, Biosecurity NZ, NZFSA, Wellington, 5 December 2011).

must be carried out in a neutral manner (perhaps by an independent third party) to ensure all parties subject to the merger are not negatively impacted.

As the MPI was launched in April 2012 it will be April 2013 before the first annual report and review is issued and the advantages and disadvantages of the merger become apparent.

9.2 A NEW DIRECTION IN GOVERNMENT POLICY – GOVERNMENT REFORMS

In 2009 the government released a statement on regulation called “Better Regulation, Less Regulation”. This set the theme for the National government’s approach to regulatory reform which is influencing environmental health through the current bills discussed in this chapter.

The government’s statement stressed the negative impact of “over regulation” and emphasised the importance of using an economic focus, stating that “better regulation, and less regulation, is essential to assist New Zealand to become more internationally competitive and a more attractive place to hire and do business”. The government further asserted that New Zealand would be economically disadvantaged by its “size and geographical isolation” unless regulation making powers are used sparingly, and outdated or poor quality regulations were removed to “unshackle our economy”.

Central government provided two commitments in the statement:

- We will introduce new regulation only when we are satisfied that it is required, reasonable and robust.
- We will review existing regulation in order to identify and remove requirements that are unnecessary, ineffective or excessively costly.

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This has resulted in a commitment to submit a “Regulation Reform Bill” to Parliament annually to simplify the editing and/or removal process for primary legislation.

The above demonstrates a strong desire from the government to minimise central government intervention for what it sees as favouring economic freedom and individual autonomy. Minimising regulation does not initially appear consistent with goals of increasing central government direction to local government (however this may be achieved by use of existing mechanisms such as creating NES and NPS and does not necessarily require new regulation). Nor does it look towards providing a statutory framework clarifying the roles of various environmental health parties to avoid jurisdictional overlap. Still the commitment to revising the effectiveness of regulation may be positive in encouraging the government to address outdated legislation (even though this has yet to have a positive effect in progressing the Public Health Bill to update the 1956 legislation).

Similarly commitments to simplifying the regulatory framework could also assist in consolidating the legislation relevant to environmental health.\textsuperscript{1648} Caution must be used when measuring the effectiveness of these proposals. The emphasis appears to be on removing regulatory barriers for the economic advantages rather than the added clarity for the level of government involved in implementation. However the statement does promise a significant change in “the approach both Ministers and government agencies take to regulation”\textsuperscript{1649} meaning that prior to creating new regulations the use of private agreements will be considered a preferred option with regulation only adopted after stringent cost analysis to determine the best process.

This “private agreement” may encourage further use of collaborative or multiparty agreements already available to local authorities under the RMA\textsuperscript{1650} and LGA\textsuperscript{1651} which would be beneficial in encouraging parties to work together to achieve best practice outcomes. However this approach may have implications for public participation and accountability in respect of the decision making. It is of particular concern if parties bargain between each other (and make concessions) to reach agreements without input.

\textsuperscript{1648} As discussed in previous chapters, over sixty different pieces of legislation affect environmental health with approximately ten different pieces of legislation regularly used for environmental health management.
\textsuperscript{1649} Bill English & Rodney Hide “Government Statement on Regulation: Better Regulation, Less Regulation” (17 August 2009) at 2.
\textsuperscript{1650} Resource Management Act 1991, s 36B.
\textsuperscript{1651} Local Government Act 2002, s 15.
from the public on these changes. Care must be taken that (as in current RMA and LGA provisions\textsuperscript{1652}) a “private agreement” is not entered into unless it is the most efficient and effective method for “exercising the function, power, or duty”.\textsuperscript{1653} In outlining this “private agreement” approach, where local government is to be a party to the agreement, any provisions must emphasise the core principles relating to local authorities in the LGA\textsuperscript{1654} in order to protect public participation. While these principles encourage local authorities to “collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities”\textsuperscript{1655} it also states that local authorities must operate in a “democratically accountable manner”\textsuperscript{1656} with “regard to, the views of all of its communities”\textsuperscript{1657} in performing its role.

9.2.1 “Better Local Government” Reform

In March 2012 the government’s release of its reform programme “Better Local Government” continued the themes of simplification and economic efficiency. The key focus of the reform was to “provide better clarity about councils’ roles, stronger governance, improved efficiency and more responsible fiscal management”.\textsuperscript{1658} The government referred to its earlier work in the creation of the Auckland Council as a success in local governance reform with plans to modernise governance structures of other local authorities with similar approaches.

The programme focuses on eight key initiatives which will impact on local governance:\textsuperscript{1659}

1. Refocus the purpose of local government
2. Introduce fiscal responsibility requirements
3. Strengthen council governance provisions
4. Streamline council reorganisation procedures

\textsuperscript{1653} Resource Management Act 1991, s 36B. See discussion on the Land and Water Forum in Chapter 9, Proposed Solutions and Reforms.
\textsuperscript{1654} Local Government Act 2002, s 14.
\textsuperscript{1655} Local Government Act 2002, s 14(1)(e).
\textsuperscript{1656} Local Government Act 2002, s 14(1)(a).
\textsuperscript{1657} Local Government Act 2002, s 14(1)(c)(i).
\textsuperscript{1659} The initial four points were planned to be introduced in May 2012 and passed by September 2012. The remaining four points will be incorporated into a second Local Government Reform Bill in 2013. See New Zealand Government (Nick Smith) Better Local Government (New Zealand Government, Wellington, March 2012) at 3.
5. Establish a local government efficiency taskforce
6. Develop a framework for central / local government regulatory roles
7. Investigate the efficiency of local government infrastructure provision
8. Review the use of development contributions

Points 1-4 are incorporated into the Local Government Act 2002 Amendment Bill 2012.\textsuperscript{1660} Points 5-8 are set down to be included in a second Local Government Amendment Bill planned for 2013.

9.2.2 Local Government Act 2002 Amendment Bill – Key Proposed Changes

The Local Government Act 2002 Amendment Bill (LGA Bill) was introduced to Parliament in May 2012 with the first reading taking place on the 12\textsuperscript{th} of June 2012. The Bill was referred to the Local Government and Environment Committee with a report due on the 5\textsuperscript{th} of November 2012.

There are two key proposed changes in the Local Government Act 2002 Amendment Bill that could have a significant effect on environmental health management in New Zealand. First, there is the proposed change to s 10 of the Local Government Act 2002 to amend the purpose of local government. Secondly, there is a change in the “intervention powers” of central government.\textsuperscript{1661}

These provisions of the bill have attracted major attention with Local Government New Zealand stating that “all members had passed a motion against the redefinition of their purpose”\textsuperscript{1662} and that while the bill itself contains some positives, there are “significant concerns”\textsuperscript{1663} about the change in purpose.

Criticism over the bill has increased with concern over the amount of central government research and consultation undertaken prior to drafting the bill. The Department of Internal Affairs in their regulatory impact statement appeared confused as to the need for the short time frame in drafting the legislation and introducing it to Parliament, asserting that there was “limited evidence to inform the development of

\textsuperscript{1660} This bill has since been passed following the date of this thesis (in force 5 December 2012).
\textsuperscript{1661} Since the date of this thesis the bill was enacted without modification so these two changes are now in force.
\textsuperscript{1662} Isaac Davison “Councils Unanimous in Rejecting Reform” The New Zealand Herald (New Zealand, 17 July 2012).
\textsuperscript{1663} Isaac Davison “Councils Unanimous in Rejecting Reform” The New Zealand Herald (New Zealand, 17 July 2012).
th[e] proposals”1664 and that the limited timeframe “restricted the ability to assess multiple options”1665 resulting in proposals that “are not, or are only partially tested”.1666 These concerns have been repeated in submissions from Local Government New Zealand1667 and the Auckland Council.1668

9.2.3 The Purpose of Local Government

Section 10 of the Local Government Act 2002 states:-1669

The purpose of local government is –

(a) To enable democratic local decision-making and action by, and on behalf of communities; and

(b) To promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

Section 10(a) remains intact with a focus on the local community in local decision making, however section 10(b) will be replaced by the following amendment:-1670

(b) To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

The concept of “good-quality” in the amended s10(b) has been further defined as:-1671

…infrastructure, services, and performance that are –

(a) efficient; and

(b) effective; and

(c) appropriate to present and anticipated future circumstances.

This provides a significant change in the purpose of local government. Removal of the “well-being provisions” has reduced the scope of local government, particularly in

1667 Local Government New Zealand “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012”.
1668 Auckland Council “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012”.
1669 Local Government Act 2002, s 10 (as at 1st December 2012). This amendment has since past following the date of this thesis.
regards to responses for health and environment. Only the economic well-being provision remains present and has been elevated in status so that all functions performed by local government must be based on “cost effectiveness”.

While a definition has been given for the concept of “good quality”, no definition has been given for “local infrastructure” or “local public services” which are new terms introduced through the Bill. While definitions exist for “community infrastructure”, “network infrastructure” and “core services” the use of different terminology suggests a deliberate intention by central government to infer a different meaning to the terms. This creates uncertainty and concern in determining the exact meaning of the section and accordingly the impact of its change. This problem may result in litigation to gain legal certainty resulting in local authorities facing unnecessary “costs in determining the legality of the[ir] actions”.

9.2.4 Reasons for Changing the Purpose Section

Ten years ago the Local Government Act 2002 (LGA) broadened the purpose of local government to include the promotion of the “social, economic, environmental, and cultural well-being of communities”. This direct reference to environment and community well-being is consistent with environmental health principles and has provided positive change in environmental health management. It has allowed local government to extend its focus and regulate air quality, water quality, land contamination and housing with a focus on improving the physical environment for the health benefits of the local community. The reference to culture has acknowledged the importance of Maori participation and consultation in resource management. Economic concern was also present, but was given the same priority as other factors.

The current National government has pinpointed this broadened mandate as being responsible for increases in local government spending and has blamed the wording of the section for providing “false expectations about what councils can achieve and

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1671 Local Government Act 2002 Amendment Bill, s 7(2).
1672 Kenneth Palmer “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012”.
confusion over the proper roles\textsuperscript{1675} of local government. Central government has criticised local government for setting targets within the broad wording of s10 (the purpose section) but beyond the central governments intended delegation. The report identifies councils setting targets related to “NCEA pass rates, greenhouse gas emission reductions and reduced child abuse”\textsuperscript{1676} which are recognised as important but beyond council responsibility. There is some basis to this assertion. These problems occur at a national level and there are central government agencies responsible for them.\textsuperscript{1677} While local authorities may be closer to their communities, and may be in a better position to coordinate with community groups concerned to address these problems, this leads to a double up in approach and confusion as to responsibility.

While local authorities in other countries such as the United Kingdom have an active role in child welfare, social services and education, these concerns have always been addressed at central government level in New Zealand due to the relatively small national population and the need for uniformity in approach.\textsuperscript{1678} However, local government has always had involvement in some of these areas. For example, the Auckland Council continues to own council flats and accommodation that it rents out to individuals to fulfil its desire to provide cost effective housing in its community. There is an emphasis at local government level on provision of care and assistance for the elderly with accommodation provided in both council housing and public hospitals. These examples were not a result of the broadened purpose of the LGA and were present prior to 2002.

The new Auckland Council Plan\textsuperscript{1679} (adopted on the 29\textsuperscript{th} of March 2012 and providing planning guidance for the next 30 years) provides some useful examples of how local government is focussing on targets which may be better addressed at central government level. Targets under the plans first strategic direction include broad

\textsuperscript{1677} For example the Ministry of Education is involved in education (and NCEA pass rates) and the Ministry of Justice and Child, Youth and Family Services are involved in child welfare.
\textsuperscript{1678} See chapter 3 of this thesis, \textit{The History of Environmental Health}.
\textsuperscript{1679} Auckland Council Auckland Council Plan (Auckland Council, Auckland, March 2011). The Auckland Plan of March 2011 was prepared under s 79 of the Local Government (Auckland Council) Act 2009. The plan, after submissions, was adopted by the Auckland Council’s Governing Body on the 29\textsuperscript{th} of March 2012. The Plan referred to throughout this thesis is the digital copy of the plan available on the Auckland Council’s website that contains all relevant updates. See <http://theplan.theaucklandplan.govt.nz/>.
focuses under the priority of addressing the needs of young people, strengthening communities and improving the “education, health and safety of Aucklanders, with a focus on those most in need”. These targets can be divided into three distinct categories – those targets based squarely in traditional local government (unlikely to be affected by a change in purpose), those targets incorporating health and environmental well-being (that are supported by the LGA purpose and may be adversely affected by a change in purpose) and those targets which appear on the periphery of local government responsibility (and may have fuelled central government’s interest in narrowing local government scope).

Traditional local government roles in health and well-being (in the current purpose provision) also cross over into the ideas of infrastructure and service provision to the community (in the proposed purpose provision) and are unlikely to be affected by the change in provision. These environmental health areas include water supply, sewage, storm water, air quality, soil contamination, waste disposal, food regulation and nuisance control. Recent central government initiatives on the upgrade of drinking water systems, the implementation of the Waste Minimisation Act 2008, the National Environmental Standards on Air Quality, the Food Act 1981 (and pending Food Bill) and the Resource Management Act 1991 have placed the burden of implementation directly on local government.

Auckland Council’s targets of reducing disparities in life expectancy between ethnic groups, ensuring child health and immunisations, reducing child hospitalisation and ensuring smokefree park and recreation areas all fall within the ambit of local government under the premise of providing for health and environmental well-being. Local government has an interest in these areas through their functions and duties in legislation.

These examples are consistent with the understanding that “community context” is intrinsically linked to health and well-being. In the Auckland Regional Public Health Service’s (ARPHS) submission on the Bill, the ARPHS emphasised the capacity

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1680 Auckland Council Auckland Council Plan (Auckland Council, Auckland, March 2011) at 68.
1681 Auckland Council Auckland Council Plan (Auckland Council, Auckland, March 2011) at 68.
1683 Auckland Regional Public Health Service “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012”.
of local government to shape the physical environment in a manner that is unachievable using national direction. This viewpoint was reaffirmed in 2011 by the United Kingdom Department of Health\(^{1684}\) who have adopted the opposite approach to New Zealand by increasing the role of local government in public health on the basis that local government is in the best position to “shape services to local needs, influence wider social determinants of health, and tackle health inequalities”.\(^{1685}\)

Those areas likely to be affected by the change, are areas related to the “well-being” concepts of the earlier Act (in providing for environment and health) that may fall outside the ambit of the new Act’s wording on infrastructure and service provision. Some of these roles may be argued to be on the periphery of local government responsibility.

Examples included in the Auckland plan are targets in education (providing early childhood education; improving NCEA performance and the uptake of post-secondary qualifications)\(^{1686}\) and crime (reducing criminal offending, increasing “perceptions of safety”, decreasing domestic violence and decreasing alcohol related vehicle injuries).\(^{1687}\) These examples have been highlighted by central government as going beyond the traditional role of local government and are responsible for the redirected focus of local authorities so that councils focus “on doing things only councils can do”\(^{1688}\).

9.2.5 Critical Analysis of the Change in Purpose Section

Central Government’s reasoning here is flawed in several ways as it is based on the following assumptions:-

1. That local authorities are continually stepping beyond the traditional boundaries of their role and that this is causally connected to the increase in budget costs and local authority debt. (This point is discussed further below).


\(^{1685}\) Auckland Regional Public Health Service “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012” at 3.

\(^{1686}\) Auckland Council *Auckland Council Plan* (Auckland Council, Auckland, March 2011) at 68.

\(^{1687}\) Auckland Council *Auckland Council Plan* (Auckland Council, Auckland, March 2011) at 68.

\(^{1688}\) Local Government Act 2002 Amendment Bill Explanatory note at 1.
2. That economic efficiency will be achieved by reducing the scope of local government. (This point is discussed further below).

3. That economic efficiency should be of paramount concern to local government in carrying out their role. There is no clear reason as to why economic concerns should be more important than ensuring health and well-being at local government level. The retention of the requirement for local authorities to ensure “democratic local decision-making and action by, and on behalf of communities”\textsuperscript{1689} would assume that communities have a role in determining the necessary actions in their community and that communities may prefer an emphasis on health and well-being in decisions around community infrastructure and services.

4. That reduced local government spending is an adequate measure of local government efficiency. There is no necessary correlation between a decrease in spending and increased efficiency and in fact lower local government spending may result in under-investment, deterioration of infrastructure and increased long term financial costs.

In regards to the first assumption, there is little evidence to prove that local authorities are continually stepping outside of their role (leading to increased spending and debt). Instead local government argues that they have continued their focus on core services with only negligible spending being dedicated towards additional projects. Local Government New Zealand has asserted that three independent reports have “concluded that the sector has not significantly expanded the scope of its activities since 2002”.\textsuperscript{1690} Similarly a Local Government Commission review of the LGA in 2008 confirmed that “the new Act, and particularly the conferring of full capacity, rights and powers on local authorities, has not led to a proliferation of new activities being undertaken by councils”.\textsuperscript{1691}

\textsuperscript{1689} Local Government Act 2002 s 10(a).
The Auckland Council’s submission responds to the central government’s criticisms (discussed above) which appear to include examples directly from the Auckland Council’s new plan, arguing that the Auckland Council continues a focus on “core services” and that the plan was produced in “close collaboration with central government”. Rather than duplicating the role of central government in these periphery areas (education and crime) the Council included these targets to reflect the council’s willingness to be involved in a collaborative approach in these areas (which will not necessarily result in ratepayer expense). Instead it is expected to allow the council to “contribute to central government objectives” and increase the effectiveness of central government’s current activities. Accordingly any change in wording of the purpose section that would remove the emphasis on “well-being” and collaboration must be discouraged.

If it is accepted that local government focus has remained the same, and councils have not moved significantly outside of their core areas, then there can be no connection between their actions and the increase in local government spending and debt (as argued by central government). Instead there are several factors which may be responsible for the changing financial status of councils.

First, central government itself may be responsible for increasing the work load on local government without providing additional funding to match, or drawing on central government finances in situations where local government implementation is required. An example of this is the legalisation of the sex industry by central government which required implementation at the local government level without any additional funding being provided.

Another example of local government expenditure and debt includes council spending on “better sewage reticulation, water provision, and other public health measures, which are mandated under the Health Act”. These changes were made following central governments “demands for higher drinking water standards” and the

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1692 Auckland Council “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012” at 12.
1693 Auckland Council “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012” at 12.
expenses related to upgrading wastewater schemes. These changes were necessary to provide for environmental health and have benefited local communities by resulting in new infrastructure (necessary to comply with directions from central government).

As this infrastructure would also fit under the proposed purpose, the LGA Bill will not address the issue of local government debt and burden on the ratepayer. Instead these issues could be addressed by central government providing subsidies for necessary large scale works under s 27A of the Health Act 1956 or providing “retrospective grants”. It is important that central government reaffirm its dedication to providing financial assistance to local government in these matters. This is particularly important as these grants have been “reduced or eliminated” since the introduction of the section, with roading project grants remaining the “only guaranteed grants”.

As stated in the submission of the Centre for Local Government at the Auckland University of Technology, the real problem is not the wider scope introduced in the LGA 2002, it is that the “promise of the LG Act 2002 has not been matched by an appropriate sharing of roles, responsibilities and funding from central government”. Borrowing by local government may also reflect the concept of cost spreading between current generations and future generations. Consideration is required under the RMA for the sustainable use of resources to “meet the reasonably foreseeable needs of future generations”. Local government assets such as roading, water works, parks and recreational areas have “long service lives” and are capable of servicing future generations (provided they are maintained). Fairness denotes that the expense of establishing and running these assets should be spread between the current generation who establishes them and the future generations who will benefit from them. By local government borrowing to finance large projects they are increasing the number of

References:

1700 Centre for Local Government, Institute of Public Policy, Auckland University of Technology “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012” at 10.
projects they can engage in, as well as lifting the burden on current ratepayers of subsidising “the consumption of tomorrow’s ratepayers”.1703

The change in purpose further ignores the potential effects of removing the “cultural well-being” focus, and the potential effect on Maori and health disparities. The inclusion of “cultural well-being” has been seen as an important step in recognising the tangata whenua status of Maori and in acknowledging obligations under the principles of the Treaty of Waitangi. The removal of “cultural well-being” could create uncertainty as to the emphasis to be placed on Maori when local authorities carry out their role. For example, the Auckland Council Local Government (Auckland Council) Act 2009 established the Auckland Council’s independent Maori Statutory Board. The Maori Statutory Board could rely on the concept of “cultural well-being” in giving advice to the Auckland Council. If “cultural well-being” is removed this could potentially have a real effect in reducing the council’s compulsion to consider culture (specifically Maori culture) in making decisions, and would reduce the effectiveness of Maori consultation (in turn having a negative effect on Treaty of Waitangi principles). Even if the role of Maori could be sufficiently protected under Treaty of Waitangi provisions (and the acknowledgment of Maori under Part 2 considerations of the Resource Management Act 1991) the removal of “cultural well-being” will no doubt be tested in courts to determine its effect, resulting in costly and avoidable litigation.

The change in purpose also leads to “disharmony”1704 between the purpose of local government under the LGA and the purpose of the Resource Management Act 1991 (RMA) which provides for sustainable management to enable “people and communities to provide for their social, economic, and cultural well-being and for their health and safety”.1705 This lack of consistency is undesirable as it may result in local government being directed to have regard for “well-being” in fulfilling their obligations under these Acts, but the LGA may leave them in a position where they lack the “power under the LGA to implement that objective”.1706

1704 Kenneth Palmer “Submission to the Local Government and Environment Committee on the Local Government Act 2002 Amendment Bill 2012”.
This issue is also apparent when considering other legislation such as the Civil Defence Emergency Management Act 2002 which provides for the “sustainable management of hazards…in a way that contributes to the social, economic, cultural and environmental well-being and safety of the public”. A more recent example of the Canterbury Earthquake Recovery Act 2011 shows that central government was still following the “well-being” concept in 2011 with the passing of this Act which provided the Minister and the Canterbury Earthquake Recovery Authority with the statutory powers necessary to “restore the social, economic, cultural and environmental well-being of greater Christchurch communities”.

9.2.6 Conclusions on the Change in Purpose

The advantages of changing the purpose provision are outweighed by the disadvantages. This is largely due to the fact that central governments proposed change has been based on the assumptions discussed above.

The removal of “well-being” appears detrimental to local government and may reduce the effectiveness of current environmental health approaches. Many local government initiatives (including joint initiatives with District Health Boards) are at risk of being found to be outside the new scope of local government’s purpose. These could include immunisation programmes, community health awareness programmes, disposal of hazardous waste in the urban environment programmes and healthy living programmes. These programmes may all be at risk of falling outside the scope of the purpose even though they are a minor part of local government spending.

While the exact effect is uncertain, the increase in economic focus is a cause for potential concern. While the retention of “local democracy” may make it arguable that councils can “fit” their activities into this section, costly litigation will be required to determine the legality of local government’s actions leading to unnecessary complication and expense. It appears that the costs in implementing the new section (and clarifying its meaning) will exceed any potential benefits for rate payers.

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1707 Civil Defence Emergency Management Act 2002, s 3(a).
1708 Canterbury Earthquake Recovery Act 2011, s 3(g).
9.2.7  Suggested Alternatives to the New Purpose Section

In the absence of the current wording being maintained, any replacement purpose section would still need to support an interest in “well-being” to affirm local authorities being involved in other initiatives and representing their communities. This could be achieved by creating a hybrid of the two purpose provisions, creating a purpose that required local authorities to provide cost efficient and effective infrastructure and services which reflect local community needs, while enhancing community well-being. This provides the economic emphasis while still maintaining an interest in community well-being. This could satisfy both central and local government that the economic realities of the global economy were being faced, but that local democracy was being maintained.

However, given that a key criticism has been the lack of consultation and testing of proposed reforms prior to the introduction of the Bill (as outlined by the Department of Internal Affairs in their regulatory impact statement), it is likely that no changes in local government purpose will be readily accepted by local government without the opportunity to be actively involved in the drafting process.

9.2.8  The Power of Central Government to Intervene

Central government currently has the power to intervene where it is determined that local government is unable to act or is failing to act to fulfil its duties and functions. These powers are necessary where councils are unable to fulfil their role (regardless of fault), and are accompanied by provisions that require councils to submit performance reports to central government so their effectiveness can be monitored. While these powers were inserted in part 10 of the LGA as a safeguard, they have rarely been used.

This intervention power, while introduced in 2002, was used for the first time in 2010 when the government acted on concerns about the Canterbury Regional Council (known as Environment Canterbury or ECan) and the slow progress of water consents. Central government responded by having Parliament pass the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 which provided for the appointment of commissioners as temporary replacements for elected officials.

This issue is discussed in early chapters of this thesis. Refer to chapter five, Environmental Health Functions of Central Government for further detail.
The Act provided the commissioners with power to “address issues relevant to the efficient, effective, and sustainable management of freshwater in the Canterbury region” effectively taking over the role of ECan. The use of these powers drew considerable criticism from the legal profession, local government and the local community who were concerned that central government had usurped local democracy by taking control of Canterbury’s valuable freshwater asset. On the 7th of September 2012 central government reviewed the commissioner’s progress and renewed their term in control.

The new intervention powers contained in the LGA bill go beyond those already included in part 10 of the LGA. The question remains whether this increase in intervention powers is necessary, and whether it will have a positive effect on local government (and accordingly a positive effect on environmental health management).

Central government has asserted that the current intervention provisions in part 10 of the LGA are inadequate as they only address situations where issues have actually occurred and are not “preventative” in nature. Instead central government intends to amend the powers to allow for early intervention (which could also be voluntarily called for by councils). This is based on the premise that it is more efficient and effective for “central government to help struggling councils before situations become critical”. Powers would be divided into two categories, powers to assist councils and powers to intervene in council affairs. The Minister will have the power to require information from councils. This information will then be assessed to determine the level of intervention necessary, ranging from the appointment of a Crown Review Team, the appointment of a Crown Observer (on the Review Team’s recommendation), the appointment of a Crown Manager (based on recommendations of the Crown Observer and Review Team), the appointment of a

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1710 Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 3(a).
1711 Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, s 3(b).
1715 Local Government Act 2002 Amendment Bill, s 255.
1716 Local Government Act 2002 Amendment Bill, s 256.
1717 Local Government Act 2002 Amendment Bill, s 258.
1718 Local Government Act 2002 Amendment Bill, s 258B.
Commission (in most severe cases where there are “significant problems relating to the local authority”)\textsuperscript{1719} and the ability to call a general election.\textsuperscript{1720}

While there are benefits to introducing a graduated intervention framework, the increase in intervention powers under the LGA Bill could be viewed as an unnecessary change (given the adequacy of the current intervention powers in place). Care must be taken to ensure that intervention only takes place in exceptional circumstances to protect the roles of local democracy and local decision making. The wording of the proposed sections may give a broader scope than necessary.

Both “significant” and “problem” (in relation to significant problems of local authorities) are defined further in the Bill.\textsuperscript{1721} “Problems” includes “a matter or circumstance…that detracts from or is likely to detract from, its ability to give effect to the purpose of local government” and “significant” means “the problem will have actual or probable adverse consequences”. The emphasis added in italics shows that the terms themselves, while attempting to limit the ability of central government to intervene, are very broad and leaves it open to the discretion of the Minister as to when something is likely to cause problems. This calls for a subjective analysis rather than an objective acknowledgement of a problem that has already occurred.

This new style of wording is adopted in all of the replacement intervention sections creating a broader discretion then may be necessary. For example, the Minister’s power to request information from councils depends on the Minister’s belief that a problem “may exist”\textsuperscript{1722} or the local authority “may be unable or unwilling”\textsuperscript{1723} to deal with the problem. The Minister’s power to appoint a Crown Review Team is subject to the Minister concluding that there “may be a significant problem”\textsuperscript{1724} or that a significant problem “may exist”.\textsuperscript{1725} The Minister’s ability to appoint a Commission requires the Minister to believe a significant problem “is impairing, or likely to impair”\textsuperscript{1726} or “is

\textsuperscript{1719} Local Government Act 2002 Amendment Bill, s 258D.
\textsuperscript{1720} Local Government Act 2002 Amendment Bill, s 258J.
\textsuperscript{1721} Local Government Act 2002 Amendment Bill, s 254.
\textsuperscript{1722} Local Government Act 2002 Amendment Bill, s 255(1)(a).
\textsuperscript{1723} Local Government Act 2002 Amendment Bill, s 255(1)(b).
\textsuperscript{1724} Local Government Act 2002 Amendment Bill, s 256(1)(b).
\textsuperscript{1725} Local Government Act 2002 Amendment Bill, s 256(1)(c)(i).
\textsuperscript{1726} Local Government Act 2002 Amendment Bill, s 258D(1)(a)(i)(A).
endangering, or likely to endanger”.1727 This allows the Minister to act in a much broader range of situations than in previous legislation.

The Auckland Council, in their submission on the Bill, suggested the removal of these words to provide clarity and certainty as to when central government is likely to intervene. They suggested the replacement of terms such as “may be” with “is” and “may exist” with “exists” to provide definitive legislation.1728 However while this would increase clarity, it would defeat one of central government’s main objectives with the change – to provide central government with a “graduated mechanism” to allow intervention “to help struggling councils before situations become critical”.1729

If central government keeps the broad wording to achieve this aim, threshold tests should be created so that central government intervention would only occur in “exceptional circumstances” or as a “proportionality test”, by keeping the intervention of the Minister “in proportion to the importance of the interests which the power is intended to protect”.1730

9.2.9 Will the Change to Intervention Powers have a Positive Impact?

The most basic criticism of these intervention powers is that the change is unnecessary. The current intervention powers fulfil their purpose and, as seen in the Environment Canterbury example above, the need for intervention is very rare. The current provisions in part 10 of the LGA provided sufficient opportunities for central government to intervene and they have done so where necessary. While the change in provision could be due to central government’s concern that local government is acting beyond their scope and incurring unnecessary debt, it has been concluded above that this is not a problem. At their best, the new powers will have little effect as they are unneeded. At their worst, the new powers could pose a serious threat and “undermine the principle of a separate institution of local government”.

There are already ample provisions in the current Act to ensure that local authorities operate prudently. These include the requirement that they plan and adopt strategies consistent with national planning documents, and that local government exercises its power “wholly or principally for the benefit of its district”.\(^{1731}\) The Auditor-General has the powers to check local government planning and report back to Parliament on any issues, or to inquire on any irregularities.\(^{1732}\) The Office of the Ombudsman can “inquire into a council decision”,\(^{1733}\) members of the community can pursue court proceedings and / or the Minister can act under part 10 of the LGA 2002. The most obvious safeguard is not legislative, but is based on the fact that councils are voted in during elections. If they continue to make decisions which the local committee disagrees with, the council members will be voted out at the next election. This generally ensures that councils act in a manner consistent with the will of their community.

### 9.3 LOCAL GOVERNMENT AMENDMENT BILL PROPOSED FOR 2013

There are two further central government initiatives, likely to be incorporated into a Bill in 2013, which could have significant effects on environmental health management. These changes involve the development of a “framework for central / local government regulatory roles”\(^{1734}\) and any proposed reforms resulting from an upcoming investigation into the “efficiency of local government infrastructure provision”.\(^{1735}\)

#### 9.3.1 Developing a Framework for Central / Local Government Regulatory Roles

The central government / local government relationship has been discussed extensively in chapter 5, *Environmental Health Functions of Central Government* (Chapter 5). This discussion emphasised the importance of cooperation and transparency as both central

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\(^{1731}\) Local Government Act 2002, s 12(4) and (5).


government and local government have a role in addressing environmental health. An alternative option is consolidation – drawing all environmental health functions into one body at central government level. The Environmental Protection Authority (EPA) could have been this centralising vehicle. However, as discussed in chapter 5, the EPA has been given limited budget and scope. Central government has expressed no intention in letting the EPA take over the policy making position of the Ministry for the Environment, or the implementation role of local government. While consolidation would solve any issue in overlap and jurisdictional control, this overlooks the value of a national direction being implemented with local flexibility (which preserves local democracy).

Chapter 5 concludes that in some respects, it is not the number of interested parties that is an issue, but rather it is the connections and interactions between these groups and the flow of information and cooperation. It may be a matter of streamlining, with central government producing national guidelines, and revising legislation to ensure it is workable and effective. Communication between parties could encourage a more integrated framework to emerge and avoid the overlap in approach and resource use. The actual split may not be as problematic as how the parties handle the division in responsibility. Chapter 5 also discusses the Department of Internal Affairs Local Government / Central Government Interface Project. This started in 2004 with the aim of increasing local and central government coordination to ensure that local government had adequate support and direction from central government.

Central government has built on this concept with the idea of developing a framework for central / local government regulatory roles in its 2013 reforms. The New Zealand Government’s “Better Local Government” reform recognises (for the first time) many of the issues discussed in chapter 5. These include problems caused by a lack of direction on whether issues should be managed at local or central government level, and the delegation of roles to local government without the allocation of adequate funding. The report acknowledges the diversity of local government’s role and highlights many of its environmental health functions stating that:—

Local government is involved in many regulatory roles covering building, resource management, food safety, parking, litter, pests, dogs and alcohol but there is no consistent approach to policy making about what regulatory functions are most effectively achieved nationally or locally.

The government intends to address these issues by referring them to the Productivity Commission1737 (and providing it with set terms of reference). The Productivity Commission will undertake a “review of the balance of functions allocated to local government by central government and ways to improve regulatory performance in the sector”.1738 Rather than focus on productivity in the traditional sense, the “productivity” aspect of the commission’s title ensure that the Commission bases its analysis on whether the “laws, policies, regulations and institutions [that it is asked to review] best support the well-being of New Zealanders”.1739

The Commission’s independence from central government (as a crown entity) makes it a useful body to carry out these investigations by ensuring that political agendas are kept separate from discussions on best policy management of local government and central government relations. However, given that the central government provides the terms of reference to the Commission and provides the initial request for the investigation to take place, it would also make sense if Local Government New Zealand (a member based organisation representing all 78 local authorities in New Zealand) was asked for advice, as by virtue of their close working relationship with local government, they are well aware of the issues local government faces and could provide valuable advice at this time prior to the preparation of the report.

Following the return of the Productivity Commission’s report (expected in April 2013) central government, together with Local Government New Zealand, will establish a “non-statutory framework for guiding decisions on which regulatory functions are best undertaken by local and central government”.1740

1737 The New Zealand Productivity Commission is an independent Crown Entity (which became operational on the 1st of April 2011) and was established under the New Zealand Productivity Commission Act 2010. The Commission currently comprises of three Commissioners (with room for a fourth) who have collective experience in economics, business and management and providing independent advice to government bodies. See the Commissions website <http://www.productivity.govt.nz>.
This is an exciting development and a big step for central government in recognising the problems in the current system, addressing these issues through the development of the framework, and involving local government in the process. Any resulting framework has the potential to provide clarity in the roles of both parties and in doing so increase cooperation and transparency. Coordination with local government will allow them to highlight their concerns about central government funding and national direction.

However the effectiveness of the process will depend on the exact process chosen by central government in commissioning the report (i.e. how wide their terms of reference are to the committee) and how much notice they take of local government’s input. It is also important to note that any resulting framework will be “non-statutory”, so it will not be legally enforceable by either party. Given the concerns of local government discussed above, it is hoped that central government will take the initiative and insert mechanisms for resolving jurisdictional disputes, funding issues, and how to deal with areas that are overlooked by the framework, but are in need of regulation. Without these matters being included, the framework will not be an improvement beyond the positive advancements made by the Department of Internal Affairs interface project. One benefit of the framework being non-statutory is that it can be easily amended to recognise changes in position between parties, and the need for flexibility as different situations arise.

Provided the framework is established carefully it will have a positive effect on environmental health management by removing many of the jurisdictional issues that currently hinder the local and central government relationship.

9.3.2 Investigating the Efficiency of Local Government Infrastructure Provision

This provision expected in the 2013 LGA reforms addresses many of the concerns raised by local government in response to the changes in purpose provision in the Local Government Act 2002 Amendment Bill 2012. Here central government recognises the concerns of local government, namely that local government has experienced significant cost in providing key infrastructure at the request of central government. Interestingly, central government makes no causal connection between these extra costs and the increased spending and debt of local government (which may have led them to
rethink their controversial change in purpose provision). Instead central government recognises that “water, wastewater, storm water, roading, footpaths and cycle ways” are a significant cost for local government and that there is a “disconnect between the setting of standards for infrastructure and the cost implications of these standards (e.g. drinking water)”.

Again, this is a major step for central government in recognising that they are responsible for some of the burden placed on local government (by providing national direction without adequate financial and resource support). This extends beyond key infrastructure and has been a recurring problem for local government in satisfying its environmental health obligations (particularly in regards to drinking water quality and sanitation which requires major infrastructural outlay).

If done effectively, this consultation should result in increased cooperation with central government using its “benefit of greater flexibility in how it purchases such infrastructure” to assist large scale and small scale local authorities to finance its own infrastructure. Central government’s current approach appears promising, with a mixed “expert advisory group” planned with representatives from local government and the finance and engineering private sectors. Terms of reference for the group will be developed “in consultation with local government” with a report expected in 2013.

9.4 ESTABLISHING A NATIONAL ENVIRONMENTAL HEALTH ACTION PLAN FOR NEW ZEALAND

This concept is first discussed in chapter 5, *Environmental Health Functions of Central Government*, when looking at national planning strategies and environmental health indicators (envisaged as a precursor to a National Environmental Health Action Plan).

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While New Zealand has developed numerous national health strategies and plans, a National Environmental Health Action Plan, with a sole environmental health focus, would bring together the various disciplines involved and assist in providing an integrated framework. While provisional planning for a National Environmental Health Action Plan (NEHAP) started in 2001, the concept was abandoned in 2009 due to a “change in priorities and funding within the Ministry.”

This section will consider whether New Zealand should again consider developing an NEHAP to address some of the coordination and framework issues in environmental health management. Australia’s National Environmental Health Strategy is a useful case study. Australia has a similar society to New Zealand (including an indigenous population) and similar environmental concerns. As members of the Commonwealth, the development of environmental health law in both countries has historic origins in traditional United Kingdom health and planning law. Both countries already have close ties in environmental health policy and management, with shared safety standards and initiatives in environmental health. These include a joint food standards system with food manufacturers and importers in both countries required to follow the same standards (with minor country specific variation).

Under s 11(c) of the Food Act 1981 (and under the Food Standards Australia, New Zealand Act 1991 in Australia) both countries implemented the “Australia New Zealand Food Standards Code”. The code was incorporated into New Zealand domestic legislation via the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002, to fulfil New Zealand’s obligations under a trans-Tasman agreement. Other legislation that reflects shared agreements on health include the

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1747 Email from Sally Gilbert (Manager of Environmental & Border Health, Population Health Protection Group, Population Health Directorate at the Ministry of Health) to Stephanie Mead regarding the proposed New Zealand Environmental Health Action Plan (3 November 2009).
1748 As discussed in Chapter 3 of this thesis on the “History of Environmental Health”.
1749 These standards came into force on the 20th of December 2002 (s 2).
Trans-Tasman Mutual Recognition Act 1997\textsuperscript{1751} and the Health Benefits (Reciprocity with Australia) Act 1999.

The use of national health strategies in New Zealand already provides the opportunity for national health planning. This could be developed in the future to establish a National Environmental Health Action Plan, with interest in both health and environmental matters. The potential for establishing such a plan in New Zealand would depend on whether a co-ordinating body could be established here to coordinate interests in both environment and health management.

9.5 THE ENHEALTH COUNCIL AND THE EMERGENCE OF A NATIONAL ENVIRONMENTAL HEALTH STRATEGY

9.5.1 The EnHealth Council

The EnHealth Council (EnHealth) was established in Australia as an independent body to provide “national leadership on environmental health issues”\textsuperscript{1752} by coordinating and facilitating environmental health programmes and ensuring coordination of the various parties involved. EnHealth, while having an independent chair, has representatives from all areas of environmental health management, including:\textsuperscript{1753}

\ldots representatives from the Commonwealth, State and Territory Governments, the Australian Institute of Environmental Health, the environmental protection sector, public health and community sectors and the Indigenous Australian Community.

The inclusion of government environmental health bodies, such as the National Health and Medical Research Council, the Commonwealth Department of Environment and Water Resources, the Environmental Protection and Heritage Standing Committee and Public Health Australia is expected.\textsuperscript{1754} However the key strength for EnHealth is the diversity of its additional representatives.

\textsuperscript{1751}This Act provides for the “recognition in New Zealand of Regulatory Standards adopted in Australia regarding goods and occupations”.


For example, representatives are also drawn from Environmental Health Australia (EHA)\textsuperscript{1755} (which is a parallel of New Zealand’s Institute of Environmental Health). EHA comprises of environmental health professionals who work in government and non-government organisations. There are also representatives from the Australian Local Government Association (the Australian equivalent of Local Government New Zealand), whose members are local authorities throughout Australia. This recognises the important role played by local government in the implementation of environmental health law, and acknowledges the corresponding benefit of their input in environmental health planning. Similarly the EHA’s members represent acknowledgement of professionals who work at the “grassroots” of the area. These individuals, including environmental health officers, are responsible for implementing the majority of bylaws, inspections and planning, but are often given little involvement in policy planning. EnHealth also recognises the importance of acknowledging the indigenous population by providing EnHealth membership to the Deputy Chair of the “EnHealth Working Group on Aboriginal and Torres Strait Island Environmental Health”\textsuperscript{1756}

Interestingly, representatives from New Zealand’s own Ministry of Health provide the final representatives of the EnHealth Council.\textsuperscript{1757} This is important in recognising the ties between the two countries (as recognised in the above discussion on food standards) and the importance of placing Australia’s environmental management within local, national, trans-Tasman and global contexts. This provides Australia with the ability to form partnerships and engage in shared initiatives.

The Australian Health Protection Committee (AHPC) is responsible for providing guidance to EnHealth (together with reference to the National Environmental Health Strategy)\textsuperscript{1758} to assist it in carrying out its role under its terms of reference. The terms of reference establish the following responsibilities in environmental health by requiring EnHealth to:\textsuperscript{1759}

- Provide national leadership on environmental health issues.

- Drive the Implementation of the National Environmental Health Strategy.
- Advise the Commonwealth, States and Territories, local government and other stakeholders on national environmental health issues.
- Coordinate the development of environmental health action plans at local state and national levels.
- Promote and develop model environmental health legislation, standards, codes of practice, guidelines and publications.
- Strengthen the national capacity to meet current and emerging environmental health challenges.

The development of a body which contains such a diverse group of representatives is a simple concept but it has not been adopted in New Zealand. This could be due to the fact that Australia’s Federal Government system meant that the creation of a body was essential for different states and territories to work with each other, and for local governments in different states and territories to be able to coordinate. The New Zealand central government / local government system does not contain the same complex jurisdictional issues.

The EnHealth system contains many advantages that should be drawn to New Zealand’s attention. However the coordination of environmental health, within one centralised body responsible for bringing all policies, legislation and bylaws together in a recognisable and integrated framework is an important achievement. The most similar comparison in New Zealand would be the Ministry of Health’s establishment of a framework for public health action under the New Zealand Health Strategy.1760 Under public health objective three, “Build Healthy Communities and Health Environments”, 1761 key actions (to be built into strategies and operational plans) are identified for various parties including central government, district health boards, local authorities, education institutions, iwi, health providers and non-government organisations.1762 While this recognises the role of the variety of parties involved, and

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was prepared in consultation with other parties, it was still produced at central government level and reflects their ideals.

This is the key difference between the two models. The New Zealand approach involves consultation with others but central government sets the terms for consultation, determines who will be consulted, and ultimately holds discretion in making a decision. The EnHealth approach involves all parties at consultation and decision making stages. Accordingly the proposals will have more “buy-in” from the parties involved, with each party feeling represented throughout the process.

It is important to note that the concept of having one central body involved in coordination (like EnHealth) is very different to centralising environmental health management into one body (as discussed earlier in this thesis). A centralised body like EnHealth maintains independence and is free from political influence. The roles and responsibilities still remain with each party, at central and local government level (as opposed to the idea of one central body), however the coordination and facilitation of policies and programmes is done in a centralised manner. This may provide the answer to a coordinated framework with clear national direction (which is the most desired benefit of a centralised system), while still preserving local democracy and the ability for regional flexibility (as favoured in a central government / local government management system).

9.5.2 Establishing an Independent Environmental Health Coordinating Body like EnHealth in New Zealand

A central coordinating body like EnHealth could be very beneficial to New Zealand, but this reform raises several issues. Does New Zealand already have parties capable of carrying out this role? Who would be involved? And how likely is it that central government will establish such a body?

9.5.3 Existing Parties Capable of Carrying out the Role

The newly established Environmental Protection Authority (EPA) would be an obvious choice to carrying out an independent coordinating role. The EPA has been discussed in full in chapter 5, *Environmental Health Functions of Central Government*. The EPA’s role is currently evolving as Parliament determines the scope of its powers and
functions. As a newly established body the EPA would have the flexibility to adapt to the new challenge of being the centralised coordinator in environmental health. Due to its environmental focus, staff will already have an understanding of environmental health concepts.

The growth of the EPA’s role is in keeping with the opinion of the Environmental Defence Society, who argue that increasing the EPA’s role is essential to improving environmental governance in New Zealand. Their initiatives include increasing the EPA’s role in preparing NPS and NES, and allowing the EPA to be involved in local government assistance and education. This could involve creating “standardised regional and district plan templates and provisions”\(^{1763}\), providing technical support, and assisting in “planning guidance and training”\(^{1764}\).

While these functions are different to the role suggested here, both reforms propose an increased role for the EPA in environmental health management. However there are issues in the EPA taking over the independent body role, or an extended role into local government assistance and education. First, either change in role appears to go against the intention of central government in establishing the EPA. Central government has intentionally limited the scope of the EPA’s responsibilities, their budget (around 7 million dollars\(^{1765}\)), and their ability to contract.\(^{1766}\) By restricting the budget of the EPA central government has ensured the EPA stays small, fiscally responsible and limited in its activities. There may also be conflict with the EPA adopting roles in education and policy when they are also involved in decision making. Similarly, given their other roles, their ability to be a neutral chairman of an EnHealth type body may also be questioned. Such conflict should be avoided. As one of the benefits of the EPA’s establishment was to allow the Ministry for the Environment to concentrate more on its independent policy making role, it would make sense to focus any new education or advising role within the Ministry.

\(^{1763}\) Raewyn Peart *Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand* (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.

\(^{1764}\) Raewyn Peart *Improving Environmental Governance: The Role of an Environmental Protection Authority in New Zealand* (Environmental Defence Society Policy Paper, Wellington, 2 June 2009) at ii.

\(^{1765}\) This is similar to the amount of funding provided to the Parliamentary Commissioner for the Environment (who carries out a watch dog role). This shows the intention to keep costs low with limited consultation costs and spending.

\(^{1766}\) Environmental Protection Authority Act 2011, s 14.
The Department of Internal Affairs (DIA) may also be a natural choice, given its role of facilitating local government / central government co-ordination. The coordination of the area of environmental health may be seen as a natural expansion of this role in overseeing the central government / local government relationship. However this would be a substantial expansion and change of the DIA’s role, and require staff to not only have knowledge and experience in management, coordination, planning and policy, but also an understanding of environmental health concepts. This increase in resource cost and change in role may extend the DIA too far beyond its current position.

The Ministry for the Environment and the Ministry of Health could consider jointly taking on the role of coordinating the environmental health framework, nominating members from each ministry to create and manage the body. They arguably already carry out this function, as the central government parties who provide national direction to local government. They are both independent policy advisors with staff who are very experienced in environmental health concepts, policy and planning. A joint initiative would not involve significant resource or staffing costs. However there are again some issues with this. If the body was established within either Ministry, or as a joint initiative between the two, it would lack independent status. A lack of independence would affect the credibility of the body as people would consider it influenced by the agendas of each ministry. Also, both Ministries are currently responsible for providing the existing central government direction and coordination framework that has been criticised (leading to the need for reform). Unless substantial changes are made, it is unlikely that a new body would have any greater success, without a change in approach being adopted.

If individuals were moved from either / or both of the Ministry of Health or Ministry for the Environment, an independent crown entity could be established that would have the necessary political independence, as well as the necessary experience in environmental health and government management. But again, this would be reliant on Parliament being willing to establish such a body. While the establishment of the body would be beneficial, central government may be reluctant to put in the financial and resource commitment necessary to establish the body, (particularly if employees moving from the ministries to the new body needed replacing).
9.5.4 Who would be represented in an Independent Environmental Health Coordinating Body?

The parties involved in environmental health in Australia (and represented in EnHealth), are also present in New Zealand. The Ministry of Health and Ministry for the Environment would be the core government ministries. The Department of Internal Affairs would be an important addition given its role in supporting coordination between central government and local government. The Environmental Protection Authority could be represented as an independent crown entity. Representatives from district health boards, local authorities, and Local Government New Zealand (given their current representative role when liaising with the government on local government roles and responsibilities) could provide input from local government. The New Zealand Institute of Environmental Health’s inclusion would allow for individuals who work in environmental health to be involved. This includes academics, health professionals, planners, medical officers of health, environmental health officers and health protection officers, who are all involved in the provision of “front line” environmental health services and the implementation of policy and plans. Local governments may choose to consult with community groups and express their opinions, given their interest in local decision making, and Maori representation would be essential.

9.5.6 Likelihood of Central Government Establishing such a Body

While the introduction of an independent coordinating body could simplify management, and would not necessarily have a large financial impact (compared to other proposed reforms), it is difficult to predict if central government would be interested in establishing such a body. The current National government has expressed interest in reducing the influence of government, and has committed itself to government reform based on reducing the number and complexity of government bodies, reducing the numbers of public sector employees, and simplifying the current system. In light of the National government’s current reforms, and the effect of the global recession, Parliament would most likely be reluctant to establish a new independent body. Even if the operating costs of the body were low, the initial establishment and consultation processes involved in developing the body, outlining its
functions, and choosing its representing members, would still be an expensive procedure.

It is also questionable whether the voting public would be supportive of the initiative (particularly given the current government reforms and the general public’s understanding of the body and how it might be beneficial to them).

A reasonable alternative could be the introduction of an environmental health forum, involving parties who have an interest in environmental health. This could include a broad selection of people (as discussed above). The success of the Land and Water Forum in New Zealand provides a positive example of a collaborative approach which could be taken and adopted to create a national body for environmental health.

9.6 LAND AND WATER FORUM – AN EXAMPLE OF A COLLABORATIVE BODY

The idea of a Land and Water Forum (LWF) was first considered in 2008 at an Environmental Defence Society conference. The LWF is a collective forum bringing together “industry groups, electricity generators, environmental and recreational NGOs, iwi, scientists and other organisations with a stake in freshwater and land management”.1767 Representatives from central and local government attend the forum as “observers”. The forum is then used to provide advice to the government.1768 The LWF has been praised for its use of “collective governance,” which allows it to address “complex and intractable issues by bringing together the principle stakeholders…to seek agreement / consensus on a way forward”.1769

The LWF consists of three parts, a “Plenary” a “Small Group” and government “active observers”. The Plenary consists of all parties involved with the LWF – currently 51 different member organisations. The Small Group contains representatives from 21 of these member organisations. These include a selection of “main players” with interests in New Zealand water management. Parties include those in primary industry (such as Fonterra, Dairy NZ, Federated Farmers), iwi representatives, recreational and

1769 The Land and Water Forum “Making Progress: Address at the Environmental Defense Society Conference” (2 June 2010).
environmental groups (including the Environmental Defence Society, Fish and Game and Forest and Bird) and key electricity generators such as Mighty River Power and Meridian. These Small Group members meet and report back to the Plenary on a regular basis. The Small Group is joined by representatives from central and local government, who have the role of “active observers”. This involves watching the discussion and providing information on central and local government “policies and initiatives”.

9.6.1 Land and Water Forum – “A Fresh Look at Freshwater” Project

In 2009 the Minister for the Environment and the Minister of Agriculture and Forestry, requested the LWF undertake a project titled “A Fresh Look at Freshwater”. The aim of the project was to consider freshwater management in New Zealand with a view to national reform. The LWF format was chosen as the perfect body to undertake such a project because it used a “collaborative governance process”, and comprised of a large number of major stakeholders in water management.

The objectives of the project, as listed in the terms of reference, included:

- Conduct a stakeholder-led collaborative governance process to recommend reform of New Zealand’s freshwater management
- Using a consensus process, identify shared outcomes and goals for freshwater
- In relation to the outcomes and goals, identify options to achieve them
- Produce a written report which recommends shared outcomes, goals and long-term strategies for freshwater in New Zealand.

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1770 The Land and Water Forum “Making Progress: Address at the Environmental Defense Society Conference” (2 June 2010).
1771 The Land and Water Forum “Making Progress: Address at the Environmental Defense Society Conference” (2 June 2010).
1772 This role has now been taken over by the Ministry for Primary Industries.
While central government was not bound by the advice and recommendations proposed by the LWF, this project still indicated a significant step for central government. Previously, central government would use a process which involved gathering information from local authorities, gathering advice from advisory boards, committees and independent consults, and then opening proposals up to public consultation. Here the “consultation” aspect was taking the main focus. Parties who had an interest in water management, and were subject to government regulation, were given the opportunity to have input into the management system. This approach had several benefits. It allowed the discussion between these parties to take place in a neutral setting so that differences in opinion could be addressed and consensus could be reached on different issues. The process became a positive experience of working towards a mutual goal, rather than a negative experience of criticising proposed initiatives in submissions. The forum (while initially more expensive and time consuming to establish), was also a more cost effective method of planning, rather than the traditional system where parties were required to make submissions on initiatives and request to be heard.

Public consultation was also provided for in this process. However this was more tightly controlled by central government, who provided the funding (at the Minister’s discretion). The nature of consultation, timeframes for consultation and budget were determined in negotiations between the LWF and the two government Ministers.1775

The freshwater project resulted in three significant LWF reports. The first report1776 in 2010 established “shared outcomes and goals” for water management and identified problems in the current system.1777 The second report1778 in April 2012 provided advice on setting limits for water “quality and quantity” and highlighted the importance of “collaborative decision-making” in freshwater management.1779 The third report1780 in

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October 2012, contained the final recommendations of the LWF, which included advice
on the “allocation of freshwater resources”\textsuperscript{1781} (particularly where there was increasing
demand), and recommended management tools.

In 2013 these reports were used by the government to produce the discussion document,
“Freshwater reform 2013 and beyond”.\textsuperscript{1782} The document contains the government’s
proposals for significant changes to freshwater management. As the government’s
proposed reform was released after the date of this thesis (1\textsuperscript{st} December 2012), a
discussion of these 2013 reforms has been included in the chapter 10, \textit{A Look to the
Future and Conclusions}.

The LWF has a positive impact on environmental health management by dealing with
freshwater issues. The structure of the LWF could also be adapted and used to create a
new Environmental Health Forum to consider environmental health management issues
in New Zealand.

\section{9.7 THE POTENTIAL FOR AN ENVIRONMENTAL HEALTH
FORUM}

The establishment of the LWF and the use of the forum for the Freshwater reforms, has
been lauded by government as a big advance on traditional approaches of separate
consultation, submissions, and legal challenges.\textsuperscript{1783} The LWF reports are regarded by
government as succeeding in building “a wide consensus on a way forward for reform,
based on more active and effective management of freshwater and stronger national
direction”.\textsuperscript{1784}

The LWF is well respected by central and local government. Accordingly the creation
of an Environmental Health Forum (following the same model as the LWF) may be a
viable potential reform. The use of an Environmental Health Forum could enjoy the
same positive benefits, by drawing on a collaborative approach of all interested parties

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\textsuperscript{1781} Land and Water Forum \textit{Third Report of the Land and Water Forum: Managing Water Quality and Allocating
Water} (Land and Water Forum, 2012).
\textsuperscript{1782} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington,
2013).
\textsuperscript{1783} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington,
2013).
\textsuperscript{1784} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington,
2013) at 8.
\end{flushright}
in environmental health. These parties could include representatives from regional councils, territorial authorities, district health boards, Local Government New Zealand, advisory committees, iwi groups, private and NGO providers, environmental health providers, community groups and consumers. Representatives from central government, including the Minister for the Environment and Minister of Health could adopt similar “observer” roles, to those taken in the LWF. However the establishment of this body would be dependent on the Minister of Health and the Ministry of Health, having the motivation to join with the Ministry for the Environment and other stakeholders in creating a forum.

Given the central governments positive reception to the LWF it is highly possible that this motivation could be found. The establishment of a collaborative approach would also be in keeping with current trends in collaborative decision making (discussed in chapter 6, *Environmental Health Functions of Local Government*).

The use of a “forum environment,” could also encourage the use of health impact assessment (HIA) in policy development. As discussed in chapter 6, HIA can have an important impact on policy making, by providing a tool which encourages collaboration between parties, and recognises the connections between health and environmental planning when creating policies and plans. Accordingly the Environmental Health Forum could be used to discuss issues in environmental health management, and to use HIA to examine and evaluate proposed government policy. While local and central government would not be compelled to follow the recommendations of the Environmental Health Forum, this could provide government with insight into potential weaknesses and implementation problems in their planning.

The forum environment (which could include community groups, industry groups, and others interested in environmental health management) could also help identify problem areas that are overlooked by planners.1785

The establishment of an Environmental Health Forum could also result in a “national objectives framework”1786 to co-ordinate and promote environmental health outcomes. This would give the forum a similar likeness to EnHealth in Australia.

An Environmental Health Forum may also be the necessary catalyst for a renewed interest in a National Environmental Health Action Plan. The resulting plan could provide the necessary guidance and tools required to have a positive impact on environmental health in New Zealand.

Other collaborative approaches have been effectively used in New Zealand to coordinate central government, local government and non-government parties to successfully address environmental health issues. An example of this was the creation of a Dairying and Clean Streams Accord in 2003. The use of an Accord demonstrates that government may be open to new approaches in environmental health management.

9.8 DAIRYING AND CLEAN STREAMS ACCORD

The Dairying and Clean Streams Accord (the Accord) is an example of how government and non-government groups can collaborate and plan together, to address environmental health matters.

The Accord was introduced in May 2003 and was set to expire on the 31st of December 2012. Members of the Accord included the Fonterra Co-operative Group (representing those involved in the dairy farming industry), the Ministry for the Environment and Ministry of Primary Industries (representing central government) and Local Government New Zealand (representing regional councils and unitary authorities). The purpose of the Accord was to provide:

\[ ...a\] statement of intent and framework for actions to promote sustainable dairy farming in New Zealand. It focuses on reducing the impacts of dairying on the quality of New Zealand streams, rivers, lakes, ground water and wetlands.

The Accord is not a legally binding document and does not “restrict any person in the exercise of any power or discretion under any statute”. Therefore the presence of

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1786 Similar to the framework proposed for freshwater management contained in Ministry for the Environment Freshwater Reform 2013 and Beyond (Ministry for the Environment, Wellington, 2013).
1788 The Ministry of Agriculture and Forestry (MAF) was a party to the original Accord in May 2003. MAF has since been abolished and replaced by the Ministry for Primary Industries who have overtaken MAF’s position in the Accord.
the Accord does not replace existing rules and limits in regional plans, and it does not prevent regional councils from enforcing compliance when needed. However it does represent a voluntary commitment from each party, to work collaboratively, to “achieve clean health water, including streams, rivers, lakes, ground water and wetlands, in dairying areas”.\footnote{1791 Fonterra Co-operative Group, Local Government New Zealand, Ministry for the Environment, Ministry of Agriculture and Forestry \textit{Dairying and Clean Streams Accord} (2003) at 1.}

The success of the Accord depended on “co-operation and mutual assistance to achieve the agreed objectives”.\footnote{1792 Fonterra Co-operative Group, Local Government New Zealand, Ministry for the Environment, Ministry of Agriculture and Forestry \textit{Dairying and Clean Streams Accord} (2003) at 2.} This collaborative approach included a commitment to consistency in “regional plans, water quality standards and environmental monitoring”,\footnote{1793 Fonterra Co-operative Group, Local Government New Zealand, Ministry for the Environment, Ministry of Agriculture and Forestry \textit{Dairying and Clean Streams Accord} (2003) at 2.} (though provision was made for regional variation where necessary).

The targets under the Accord all have positive effects on environmental health. These included preventing pollution from dairy cattle crossing waterways, ensuring dairy effluent is “appropriately treated and discharged”,\footnote{1794 Fonterra Co-operative Group, Local Government New Zealand, Ministry for the Environment, Ministry of Agriculture and Forestry \textit{Dairying and Clean Streams Accord} (2003) at 3.} and consultation with regional councils on the development of plans.

Both regional councils and government ministries made a significant commitment to supporting the Accord and its performance targets. Regional councils committed to creating incentive schemes to encourage compliance, and to reviewing regional plans to ensure the plans supported the Accords objectives. The Ministry for the Environment was charged with monitoring the progress of Accord targets, and developing tools for regional councils (including model rules), and identifying “any legislative and institutional barriers to effective implementation of the Accord”.\footnote{1795 Fonterra Co-operative Group, Local Government New Zealand, Ministry for the Environment, Ministry of Agriculture and Forestry \textit{Dairying and Clean Streams Accord} (2003) at 5}

The use of this “accord” approach, demonstrates a positive shift in environmental health management. This encourages collaboration and “buy-in” by the affected parties, consistency in regional plans, and encourages open dialogue between local and central government. This approach could be adopted in future situations, when dealing with other industries that impact on the environment (and potentially human health).
However, it is important to note that the success of the Accord, is partially due to the centralisation of dairy farming in New Zealand through the Fonterra Co-operative Group. This resulted in one “single voice” for dairy farmers when collaborating with central and local government, and this contributed to the success of the Accord. In other industries (which do not have the same united approach) it may be more difficult to collaborate. However this should not deter government from attempting further collaborations of this type in the future.

Since the date of this thesis (1st of December 2012) the time period set for the Dairying and Clean Streams Accord has expired. However given its success, the parties have signed a new Accord called the Sustainable Dairying: Water Accord, which will come into effect in 2013. In comparison the new Accord will focus on the previous targets such as “stock exclusion,” but will introduce a further focus on “water use management and efficiency”.

At the start of 2013, the Ministry for Primary Industries released a 2011/2012 progress report on the success of the Accord. This report concluded that several key targets had been met. These targets included the introduction of “regular stock crossing points”, a reduction in “significant non-compliance…with rules and consent conditions” and an increase in “full compliance” with regional council requirements. A further target involved avoiding pollution by excluding stock from waterways. While this target of 90% was not met, 87% of Fonterra farms met this target. The success of these targets will have a positive impact on water quality, and a flow-on improvement in environmental health. While it is important to note that only “Fonterra farms” (and not unaffiliated farms) were included in this data, this still results in a significant decrease in the pollution of waterways from dairy farming.

As stated above, regional councils have been an important party, and have actively engaged with the farming sector. This engagement has involved “key regional

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1796 On the 31st of December 2012.
1797 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013) at 11.
1798 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013) at 11.
1799 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013).
1800 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013) at 2.
initiatives” aimed at “improving the environmental performance of the dairying industry”. While this has involved the standard tools, such as regional plans, rules and compliance monitoring systems, other more innovative approaches have also been adopted.

The most significant of these include research projects and funding support. The research projects have allowed regional councils to use their skill and understanding of resource compliance to educate and train those in the dairying industry. This has resulted in the publication of regional guides on managing effluent and understanding council rules and operations. Funding support has involved either direct financial support (to allow farmers to purchase plants for riparian management), or indirect support via the council purchasing infrastructure, (such as irrigation pods) which is then loaned to farmers. These innovative approaches have directly contributed to increased compliance with regional plans.

Future government reforms may benefit from regional councils being given increased opportunities to “think outside the square” in gaining compliance. However the long term funding of these initiatives may pose a problem at regional council level. This issue could be addressed by the provision of ministerial funds for these activities, which could then be distributed via the Ministry for the Environment.

9.9 SUMMARY

Both the Land and Water Forum and the Dairying and Clean Streams Accord, demonstrate a potential for collaborative approaches to be used in environmental health management in New Zealand. This would address the multidisciplinary nature of environmental health, and allow for an eclectic set of issues to be brought together and organised into a coordinated framework. The establishment of the LWF, and the support and respect it has received from central government, suggests that such a reform could be highly successful in the environmental health context.

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1801 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013) at 9.
1802 Ministry for Primary Industries The Dairying and Clean Streams Accord: Snapshot of Progress 2011/2012 (Ministry for Primary Industries, Wellington, 2013) at 9.
Chapter 10 - A LOOK TO THE FUTURE AND CONCLUSIONS

This conclusion chapter refers back to the two propositions laid out in the introduction of this thesis. As discussed in the introduction, a core theme of this thesis is the need for an integrated and coordinated system of environmental health governance. This system should acknowledge the importance of all interested parties (central government, local government, Maori and the public) and make provision for each party to carry out their functions and participate. The collaboration between parties needs to be recognised within the legal context of policies, practices and legal rules. It is important that the statutory rules underpin the system to enable it to function effectively.

This conclusion considers these points by referring back to the key propositions of the thesis. In regards to the first proposition, reference will be made to the current system, pointing out where the system works and where it is in need of reform. In regards to the second proposition, reference will be made to proposed solutions for the current problems (including those suggested by the thesis writer).

The chapter then considers any significant changes or developments that have occurred since the date of the thesis (1st December 2012) with a view to considering the direction of future reform.

10.1 IS THE LAW AND GOVERNANCE RELATING TO ENVIRONMENTAL HEALTH IN NEW ZEALAND APPROPRIATE FOR THE 21ST CENTURY?

New Zealand’s approach to environmental health has been complicated by historical factors. This ad hoc development (together with the multi-disciplinary nature of

1803 See Chapter 3, The History of Environmental Health.
environmental health\(^{1804}\) has resulted in a complicated system with a large number of
interested parties.\(^{1805}\) The key parties involved in environmental health have been
identified in chapter 5, *Environmental Health Functions of Central Government*
(chapter 5), chapter 6, *Environmental Health Functions of Central Government* (chapter
6) and chapter 8, *Environmental Health – Maori Perspective* (chapter 8).

To assist in identifying each party, and understanding their role and relationship with
each other, the thesis writer has produced a flow chart in the appendices of this thesis.
This flow chart was designed by analysing environmental health legislation and
identifying key parties and their roles and responsibilities under each act. The key
parties at central government level include the Ministry of Health\(^{1806}\) and the Ministry
for the Environment\(^{1807}\) however other ministries may have responsibilities under
various acts that impact on environmental health. A central government table is
provided in the appendices of this thesis and names each of the ministries and the
various environmental health acts they are responsible for administering.

Separate from central government is the Environmental Protection Authority\(^{1808}\) (an
independent crown entity) and the Parliamentary Commissioner for the Environment\(^{1809}\)
(an independent watchdog). Central government provides policy, regulation and
direction to local government, which consists of regional councils, territorial authorities
(city councils, district councils and unitary authorities)\(^{1810}\) and district health boards
(DHBs).\(^{1811}\) Local government is responsible for the implementation of environmental
health controls and reports back to central government.

Advisory boards or committees are used at various levels of government to gather
information and provide advice on legislative changes, plans, policy initiatives or other
issues within their terms of reference. At central government level the Ministry of
Health receives advice which assists in policy planning from the four advisory
committees listed in the flow chart. The Ministry for the Environment receives advice

\(^{1804}\) See Chapter 2, *Meaning and Importance of Environmental Health* for further detail.

\(^{1805}\) See flowchart, *Central Government and Local Government Environmental Health Flowchart*, at start of
appendices.

\(^{1806}\) See discussion in Chapter 5, *Environmental Health Functions of Central Government*, at point 5.4.

\(^{1807}\) See discussion in Chapter 5, *Environmental Health Functions of Central Government*, at point 5.5.

\(^{1808}\) See discussion in Chapter 5, *Environmental Health Functions of Central Government*, at point 5.6.

\(^{1809}\) See discussion in Chapter 5, *Environmental Health Functions of Central Government*, at point 5.7.

\(^{1810}\) See discussion in Chapter 6, *Environmental Health Functions of Local Government*, at point 6.1.

\(^{1811}\) See discussion in Chapter 6, *Environmental Health Functions of Local Government*, at point 6.5.
from a waste advisory board while the Environmental Protection Authority receives advice from a Maori advisory committee. At local government level DHBs are advised by separate public health, disability and hospital advisory committees. Local authorities establish community boards and local boards, while Auckland Council has an independent Maori statutory board which promotes issues of significance to Auckland iwi and develops a schedule of interests to assist the council in fulfilling its statutory responsibilities towards Maori. Further details on the roles of committees and advisory boards (that impact on environmental health) have been included in two tables in the appendices of this thesis. Various statutory officers are appointed by the Ministry of Health and territorial authorities to assist them in carrying out their role.\textsuperscript{1812}

Maori are also represented as a key party within the system. Both central and local government are involved in consultation with Maori through discussions with individual iwi or through representation via a Maori statutory board or iwi authority.\textsuperscript{1813} The general public is the final key party in the environmental health framework. Local democracy and community input is an important principle of all environmental health legislation.

The separation of health and environmental law has resulted in a plethora of legislation being relevant to environmental health management in New Zealand. The Resource Management Act 1991 (RMA) is the core environmental act and the Health Act 1956 and the New Zealand Public Health and Disability Act 2000 (NZPHDA) are the core health acts.\textsuperscript{1814} Other acts such as the Local Government Act 2002, Environment Act 1986, Conservation Act 1987, Environmental Protection Authority Act 2011, Hazardous Substances and New Organisms Act 1996, Biosecurity Act 1993 and the Food Act 1981 are responsible for establishing key environmental health bodies and outlining their functions,\textsuperscript{1815} and / or providing the main statutory regulation of a particular environmental health area.\textsuperscript{1816} An alphabetical list of relevant environmental

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\textsuperscript{1812} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.1.3.
\textsuperscript{1813} See discussion in Chapter 8, \textit{Environmental Health – Maori Perspective}.
\textsuperscript{1814} See discussion of the history of these acts in chapter 3, \textit{The History of Environmental Health} (point 3.5 introduces the Health Act 1956 and point 3.6 introduces the RMA). Both acts are discussed further in chapters 5, 6, 7 and 8 of the thesis.
\textsuperscript{1815} For example the Local Government Act 2002 establishes local authorities, the Environment Act 1986 establishes the Ministry for the Environment, the Conservation Act 1987 establishes the Department of Conservation and the Environmental Protection Authority Act 2011 establishes the Environmental Protection Authority.
\textsuperscript{1816} The titles of the Hazardous Substances and New Organisms Act 1996, Biosecurity Act 1993 and the Food Act 1981 are self-explanatory as to the core area of environmental health covered.
health statutes is included in the appendices of this thesis. This list illustrates that there are over sixty different pieces of legislation involved in the management of environmental health matters.

The multidisciplinary nature of environmental health, the wide range of parties involved and the huge volume of applicable legislation contribute to environmental health being difficult to collate into a complete and discernible framework in New Zealand.\textsuperscript{1817}

The parties involved in environmental health and their various roles have been described in chapters 5, 6 and 8 and a critical analysis takes place in chapters 7 and 9. The basic explanation of the current framework is that central government provides national guidance through policy, advice or direction, or the use of national instruments (such as national environmental standards (NES) or national policy statements (NPS)).\textsuperscript{1818} National strategies such as the New Zealand Health Strategy (and its resulting public health framework)\textsuperscript{1819} provide further policy and objectives for both national and local planning initiatives. Local government is responsible for implementing environmental health and as such are delegated various roles and responsibilities.\textsuperscript{1820} These include the ability to make bylaws\textsuperscript{1821}, plans and rules within planning documents to regulate environmental health\textsuperscript{1822} and the ability to exercise enforcement remedies.\textsuperscript{1823}

The hierarchy of environmental health planning documents was discussed in chapter 5\textsuperscript{1824} and reinforces the concept of national direction to ensure consistency. The nature and dynamics of the relationship between local government and central government also has a significant impact on each party and their ability to fulfil respective environmental health functions effectively.

Central government is often criticised for failing to provide sufficient national direction (due to a lack in national instruments) and assistance to local government to aid local

\textsuperscript{1817} These factors are discussed in chapters 2, 3, 5, 6 and 7.
\textsuperscript{1818} See Chapter 5, \textit{Environmental Health Functions of Central Government}.
\textsuperscript{1819} See Chapter 5, \textit{Environmental Health Functions of Central Government}, at point 5.9.
\textsuperscript{1820} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at points 6.1 and 6.5.
\textsuperscript{1821} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.2.
\textsuperscript{1822} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.3.
\textsuperscript{1823} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.3.2.
\textsuperscript{1824} See discussion in Chapter 5, \textit{Environmental Health Functions of Central Government}, at point 5.2.
government in local planning. Similarly central government has been criticised for delegating roles to local government (causing increased pressure, cost and resource use) when the issue may be best dealt with on a national level. This pull towards national direction needs to be balanced with the benefits of preserving local democracy and providing a localised approach which can be tailored to the individual community.1825

As discussed further on in this chapter, a preference for increased collaboration between parties has been concluded upon as a more effective approach than consolidation and complete control at central government level.

Criticisms of the current system are primarily contained in chapters 7 and 9, Proposed Solutions and Reforms (chapter 9). These criticisms show that the law and governance relating to environmental health, both require significant reform to be adequate or appropriate for the 21st century.

A key criticism of the current framework is that it is fragmented, outdated and outmoded to deal with current 21st century environmental health issues. While the NZPHDA provides some updated health provisions the Health Act 1956 is still the core act for health management. The Health Bill, written in 2007 is still awaiting its second reading and will also require substantial updating prior to implementation. In comparison environmental legislation has been continually revised since the RMA in 1991. The 2013 resource management reforms are scheduled to make further changes in these areas meaning that the ideology behind some of the provisions of the Health Act 1956 and the RMA are now at least 55 years apart.1826 Provisions in the Health Act 1956 also contain archaic language and require updating for effective implementation.1827 Accordingly reforms are needed to provide up-to-date tools for local government that are appropriate for contemporary environmental health issues.

The number of parties involved and the large volume of legislation has often led to the system being criticised for being fragmented. As a result of the ad hoc development of this area of law, some environmental health issues are not covered, while others are

1825 See discussion on central government / local government relationship contained in chapter 7, Critical Analysis of Central and Local Governments’ Environmental Health Functions, point 7.1.
1826 See discussion in Chapter 7, Critical Analysis of Central and Local Governments’ Environmental Health Functions, at point 7.1.5.
1827 See discussion on nuisance, cleansing orders and closing orders at point 6.1 of Chapter 6, Environmental Health Functions of Local Government and . Chapter 7, Critical Analysis of Central and Local Governments’ Environmental Health Functions, at point 7.1.4.
covered by a variety of parties leading to overlap and jurisdictional issues. This causes confusion in implementation and inefficiency in time, cost and resource use. Consolidation and increased collaboration have been discussed throughout the thesis as potential solutions to this issue. Collaboration has been concluded upon as the preferred method.

The fragmented development of this area has also highlighted other problems, being the under-utilising of some central government parties \(^{1828}\) and a lack of lateral connection between local government parties. \(^{1829}\) This lack of lateral connection between local government parties highlights the need for inter-sectorial coordination and adds to the collaboration theme.

These problems discussed throughout the thesis demonstrate that the law and governance relating to environmental health in New Zealand is not appropriate and requires reform in order to be adequate for the 21\(^{st}\) century.

However prior to recommending reforms and solutions it is important to consider whether the fragmented system is a result of the legislation itself or the implementation of it. Accordingly this thesis also considered whether the current environmental health legislation could be aligned to identify a more integrated environmental health management framework. If this is possible, it may be that the current system is adequate, but the implementation of it is not.

10.1.1 Aligning the Resource Management Act and Health Legislation – Can these acts work together to create a more integrated environmental health management system?

Chapter 6 discussed local government bylaws, plans, rules and regulation making powers and enforcement remedies. These mechanisms underpin the local government environmental health framework and are key to providing an integrated and coordinated system of environmental health.

\(^{1828}\) See discussion in Chapter 7, *Critical Analysis of Central and Local Governments’ Environmental Health Functions*, at point 7.1.3.

\(^{1829}\) See discussion in Chapter 6, *Environmental Health Functions of Local Government* at point 6.5.5 and in Chapter 7, *Critical Analysis of Central and Local Governments’ Environmental Health Functions*, at point 7.1.2.
Core legislation in this area includes the Local Government Act (LGA), the Resource Management Act (RMA), the Health Act 1956 and New Zealand Public Health and Disability Act 2000 (NZPHDA). It is important to consider whether the roles of local government under these environmental and health based acts can be potentially aligned to assist in recognising an integrated environmental health system.

The acts above combine to give local government the power to regulate a full range of environmental health concerns. For example the LGA outlines “core services” for a local authority, including the provision of “network infrastructure”\(^{1830}\), “solid waste collection and disposal”\(^{1831}\) and “the avoidance or mitigation of natural hazards”.\(^{1832}\) Under the RMA, regional councils focus on managing natural and physical resources, soil conservation,\(^{1833}\) water quality and quantity,\(^{1834}\) water ecosystems,\(^{1835}\) natural hazards,\(^{1836}\) hazardous substances,\(^{1837}\) the taking of water and “discharges of contaminants into or onto land, air or water”.\(^{1838}\) Territorial authorities focus on integrated management of natural and physical resources,\(^{1839}\) land development and land use,\(^{1840}\) natural hazards,\(^{1841}\) hazardous substances,\(^{1842}\) use of contaminated land, “maintenance of indigenous biodiversity”,\(^{1843}\) control of noise emissions\(^{1844}\) and control of activities on “the surface of water in rivers and lakes”.\(^{1845}\) The Health Act 1956 provides local authorities with other powers to improve, promote or protect public health by “preventing or abating nuisances”,\(^{1846}\) regulate drainage and sewage

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1830 Local Government Act 2002, s 11A(a).
1831 Local Government Act 2002, s 11A(c).
1832 Local Government Act 2002, s 11A(d).
1838 Resource Management Act 1991, s 30(1)(ss (c), (ca), (e) and (f).
1845 Resource Management Act 1991, s 31(d).
1846 Resource Management Act 1991, s 31(e).
1847 Health Act 1956, s 64(1)(a).
These services are regulated using a combination of bylaws and rules (contained in regional or district plans). Specific bylaw making powers are contained in both the LGA and the Health Act 1956. Under the LGA there are general bylaw making powers to protect, promote and maintain “public health and safety”\(^\text{1852}\) and prevent nuisances.\(^\text{1853}\) Specific bylaw making powers are also provided to regulate wastewater,\(^\text{1854}\) waste management,\(^\text{1855}\) water supply, drainage and sanitation.\(^\text{1856}\)

The Health Act 1956 provides similar bylaw making powers for improving and protecting public health, dealing with nuisances,\(^\text{1857}\) water supply protection and regulating drainage and sewage.\(^\text{1858}\) Additional bylaw powers are created for food protection.\(^\text{1859}\)


Where a rule or bylaw is breached, a local authority may use a variety of enforcement methods to ensure compliance with the rule or bylaw. As outlined in chapter 6, enforcement remedies including enforcement orders, interim enforcement orders, abatement notices, excessive noise directions, water shortage directions, cleansing orders and closing orders are provided for under both the RMA and the Health Act 1956. The Health Act 1956 also provides additional penalties for breach of bylaws,\(^\text{1860}\)

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\(^{1848}\) Health Act 1956, s 64(1)(g).
\(^{1849}\) Health Act 1956, s 64(1)(q).
\(^{1850}\) Health Act 1956, s 64(1)(v). See also the Food Act 1981.
\(^{1851}\) Health Act 1956, s 64(1)(v).
\(^{1852}\) Local Government Act 2002, s 145(b).
\(^{1853}\) Local Government Act 2002, s 145(a).
\(^{1854}\) Local Government Act 2002, s 146(a)(i).
\(^{1855}\) Local Government Act 2002, s 146(ii). See also the Waste Minimisation Act 2008.
\(^{1856}\) Local Government Act 2002, s 146(b)(ii) and (iii).
\(^{1857}\) Health Act 1956, s 64(1)(a).
\(^{1858}\) Health Act 1956, s 64(1)(g).
\(^{1859}\) Health Act 1956, s 64(1)(v).
\(^{1860}\) Health Act 1956, s 66.
failure to comply with closing orders, \textsuperscript{1861} failure to comply with cleansing orders, \textsuperscript{1862} failure to comply with offensive trade restrictions\textsuperscript{1863} or failure to abate a nuisance. \textsuperscript{1864}

In addition to these remedies, s 30 of the Health Act 1956 and s 17 of the RMA provide broader statutory remedies that may be invoked where an individual rule or bylaw may or may not be breached. Section 30 relates to nuisances and provides that “every person by whose act, default, or sufferance a nuisance arises or continues … commits an offence against this Act”. \textsuperscript{1865} These nuisances are defined as various situations in s 29 that are “offensive or likely to be injurious to health”. \textsuperscript{1866} A local authority is under a positive obligation to inspect for nuisances and address them when they arise. \textsuperscript{1867} Abatement notices are used to deal with the nuisance, however in cases of urgency a local authority may abate a nuisance prior to notice being given. \textsuperscript{1868}

Section 17 is broader than s 30, and provides that every person has a duty to “avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on, by, or on behalf of the person”. \textsuperscript{1869} An abatement notice or enforcement order is served under s (2) to require a person to cease an action if it “is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment”. \textsuperscript{1870}

Section 17 and s 30 are similar in their application, though s 17 has a broader application and is not necessarily limited to nuisance situations. As discussed in chapter 6, s 30 contains archaic language which is at least 30 years older than the s 17 provision. It is based on an old understanding of health and how disease is spread. Accordingly it does not assist local authorities dealing with environmental health issues in contemporary situations such as dealing with clandestine drug labs. \textsuperscript{1871} Section 17

\textsuperscript{1861} Health Act 1956, ss 42 and 47. See also Building Act 2004, ss 121-128 (repair and closure of dangerous, earthquake prone, and insanitary buildings).
\textsuperscript{1862} Health Act 1956, s 41.
\textsuperscript{1863} Health Act 1956, s 54.
\textsuperscript{1864} Health Act 1956, s 30.
\textsuperscript{1865} Health Act 1956, s 30(1).
\textsuperscript{1866} Health Act 1956, s 29.
\textsuperscript{1867} Health Act 1956, s 23.
\textsuperscript{1868} Health Act 1956, s 34.
\textsuperscript{1869} Resource Management Act 1991, s 17(1).
\textsuperscript{1870} Resource Management Act 1991, s 17(2).
\textsuperscript{1871} See discussion on clandestine drug manufacturing / P labs in Chapter 6, \textit{Environmental Health Functions of Local Government}. 

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provides a broader, more contemporary tool as the wording “offensive or likely to be injurious to health” is broadened to include “noxious, dangerous or objectionable”.

However a key difference is that s 17 is focused on matters adverse to the environment, and s 30 relates to matters adverse to human health. While there is generally crossover in environmental health (i.e. what is bad for the environment will be bad for health and vice versa), this could mean that where an activity does not have an adverse effect on the environment (so as to invoke s 17) it may be impossible to address the health issues using s 30 if the current archaic language of the section is not satisfied. As stated in chapter 6, this confirms that s 30 should be updated so that both sections are available as tools for local authorities in environmental health management.

While the alignment of the RMA and health legislation suggests a compatible approach to environmental health management can be taken, the close alignment also causes problems. For example each party at local government level produces their own plans for the one community. Accordingly when analysing the plans that apply to an area, there may be overlaps in management of an area, or gaps where an area is not covered. This leads to inefficiency in practice. This problem was discussed in chapters 6 and 7. Potential solutions include the use of joint planning tools such as health impact assessment, joint planning forums or bodies (as suggested in chapter 9) or increased collaboration through strengthening collaboration in legislation.

10.1.2 Aligning the Goals, Objectives, Principles and Purpose of the RMA and Public Health Legislation

As discussed in this chapter, environmental health law in New Zealand is managed via a plethora of legislation. Earlier chapters of this thesis considered the current legislative framework and concluded that integration of legislation and collaboration between parties is key to improving the effectiveness and efficiency of the current system. By considering the goals, objectives, principles and purpose of core legislation and how they align with each other we can determine whether a creative use of the legislative frameworks in their current form will result in a more integrated environmental health management system.

1872 See List of Relevant Legislation in the appendix of this thesis.
The RMA, NZPHDA, LGA and Health Act 1956 are all key pieces of legislation that would require alignment for an efficient system. Accordingly these acts have been analysed together with the Public Health Bill and the New Zealand Health Strategy to determine their shared interests in environmental health.

**Focus on Health and Wellbeing**

The Health Act 1956 contains clear health orientated provisions aimed at “improving, promoting, and protecting public health”. Under s 3A of the Act the Ministry of Health has the core function of “improving, promoting and protecting public health”. Under s 23 a local authority is given an active duty to “improve, promote, and protect public health” within its district and is given powers to achieve this. This focus is shared by the NZPHDA, which has the objective of improving, promoting and protecting health and reducing health disparities. The Act places an obligation on DHBs to carry out roles in pursuit of this objective.

The LGA states the purpose of local government is to “promote the social, economic, environmental and cultural well-being of communities”. The focus on “social, economic, environmental and cultural well-being” is being removed from the Act, however this key focus remains in the RMA which provides for sustainable management in a way which “enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety”. This is the key reference to health in the Act. No reference to health or wellbeing is contained in the principles of the Act listed in “matters of national importance” or “other matters to have regard to”.

The New Zealand Health Strategy has seven underlying principles, several of which relate directly to health and well-being. These principles include a statement to ensure “good health and well-being for all New Zealanders” and improvement of health for the “currently disadvantaged.”

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1873 Health Act 1956, ss 3A and 23.
1874 Local Government Act 2002, s 10. Note the purpose of local government has now been altered. See discussion in chapter 9, *Proposed Changes and Reforms*.
These sections reflect that all the core legislation have a key interest in maintaining health. This can be developed to ensure that policies, plans, regulations and bylaws (at local government level) and policies, strategies and national instruments (at central government level) are focused on positive health determinants as part of reaching any environment or community goal.

**Focus on the Environment**

The RMA provides the core environmental focus with the key purpose being the sustainable management of natural and physical resources.\(^{1880}\) The matters of national importance relate to the preservation of natural environments including lakes, rivers, significant landscapes or ecosystems deserving of specific protection, coastal marine areas, lakes and rivers.\(^{1881}\) Other matters which are “taken into account” when acting under the Act include efficient use of resources, energy, “intrinsic value of ecosystems”, maintaining the quality of the environment and climate change.\(^{1882}\)

While the current Health Act 1956 does not refer specifically to the natural environment in its purpose or principles, the Public Health Bill refers to “risks to public health arising from…the environment”,\(^{1883}\) and states that the Bill is designed to set out “clear and specific responsibilities for the identification and effective management”\(^{1884}\) of such risks. This suggests that care of the physical environment is an emerging feature of public health management. The idea has been confirmed in the New Zealand Health Strategy. The strategy identified that “good health” was reliant on factors outside of the health sector and that other parties would be involved in an effective health system (such as the Ministry of the Environment or local authorities when managing the physical environment).\(^{1885}\) Furthermore in achieving “good health” the New Zealand Health Strategy included the goal of a “healthy physical environment”\(^{1886}\) which contained key objectives of improving housing, water and sanitation services and reducing “the health effects of environmental hazards”.\(^{1887}\) These goals and objective

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\(^{1880}\) Resource Management Act 1991, s 5.
\(^{1883}\) Public Health Bill 2007 (177-2), cl 3(2)(iii).
\(^{1884}\) Public Health Bill 2007 (177-2), cl 3(2)(iii).
provide further opportunity to align the RMA and health legislation to provide an integrated approach.

The inclusion of both environmental and health concepts shows how the principles and objectives underpinning the legislation can be used to support environmental health based initiatives with the Ministry of Health, Ministry for the Environment, regional councils, territorial authorities and DHBs working together to achieve the goal. This collaborative effort is also recognised throughout the legislation.

**Collaboration**

As discussed throughout this thesis, collaboration between parties, particularly at the local government level, is very important for creating an integrated and effective environmental health management system. While the RMA provides for local authorities to enter joint agreements, there is not an emphasis on collaboration at planning and implementation stages. However a “basic principle” of a local authority, outlined in s 14(1)(e) of the LGA includes the idea that local authorities will collaborate with other local authorities where appropriate.\(^{1888}\) This allows the concept of collaboration to be introduced to environmental management.

The concept of collaboration is emphasised in latter instruments including the NZPHDA, the Public Health Bill and the New Zealand Health Strategy. Under the purpose of the NZPHDA, the Act emphasises the importance of health services being provided at the “most effective level”, either local, regional or national to ensure effective coordinated health services.\(^{1889}\) The New Zealand Health Strategy reflects central government’s intention for collaborative planning in several of its principles. First, in regards to providing “good health”, the strategy recognises that “intersectoral ways of working”\(^{1890}\) are necessary to ensure that links between the physical environment and human health are recognised and appropriate strategies created.

A further core principle is “collaborative health promotion and disease and injury prevention by all sectors”\(^{1891}\) which again demonstrates central government is supportive of a collaborative approach. Examples of these collaborative intersectoral

\(^{1888}\) Local Government Act 2002, s 14(1)(e).
\(^{1889}\) New Zealand Public Health and Disability Act 2000, s 3(5).
\(^{1890}\) Ministry of Health The New Zealand Health Strategy (Ministry of Health, Wellington, 2000) at 8.
programmes given in the strategy include road safety or strengthening families programmes which rely on coordination at national and local level.\textsuperscript{1892} The Public Health Bill further supports collaboration by stating the importance of collaboration as a key principle in “consultation, cross-sectoral collaboration, and joint planning and implementation by central government, DHBs, iwi authorities, local authorities, and other relevant organisations”.\textsuperscript{1893}

**Local Decision Making / Community Involvement**

The importance of local community input in planning and decision making is the final common concept shared across both environmental and health based legislation. The LGA states the purpose of local government is to provide a forum for democratic local community decision making and accordingly a core principle of the Act is that local authorities operate taking into account local community participation.\textsuperscript{1894} Similarly the RMA emphasises the role of local decision making in its participation and consultation sections. The NZPHDA states that a “community voice” is needed when providing health services.\textsuperscript{1895} Similarly a core principle of the New Zealand Health Strategy refers to the “active involvement of consumers and communities at all levels”.\textsuperscript{1896}

**Summary**

The Public Health Bill recognises that a variety of legislation must be used together to effectively provide for health. The Act states that its provisions reflect the need to “complement other legislation that seeks to improve, promote, and protect public health”.\textsuperscript{1897} This is important as it reflects a parliamentary recognition that multiple acts must be used together for effective environmental health management. This gives encouragement that the legislation can be effectively aligned.

All the acts provide a key theme of empowering local authorities to be active in protecting, promoting and improving health and being active in preserving the environment. It is at local government level that both environmental and health

\textsuperscript{1891} Ministry of Health *The New Zealand Health Strategy* (Ministry of Health, Wellington, 2000) at 7.
\textsuperscript{1892} Ministry of Health *The New Zealand Health Strategy* (Ministry of Health, Wellington, 2000) at 9.
\textsuperscript{1893} Public Health Bill 2007 (177-2), cl 80(c).
\textsuperscript{1894} Local Government Act 2002, ss 14(1)(a), (b) and (c).
\textsuperscript{1895} New Zealand Public Health and Disability Act 2000, s 3(c).
\textsuperscript{1897} Public Health Bill 2007 (177-2), cl 3(3)(d).
objectives meet and accordingly local government should be the key body in improving the current fragmented system. The acts show that many of the legislative mechanisms are already in place.

Throughout the thesis the importance of increased local government planning support, central government guidance and collaboration between parties has been highlighted. In particular, the lateral legislative connections between parties at local government level must be strengthened to encourage coordination. If these things are worked on, the current legislation has the basics necessary to provide an integrated system of management.

In regards to the first proposition of this thesis, the problems highlighted demonstrate that the law and governance relating to environmental health both require significant reform to be adequate or appropriate for the 21st century. There are some problems with the content of legislation (i.e. archaic provisions that need updating). However the key problems are around recognising an integrated environmental health framework (given the ad hoc development of the area). Regardless of the problems highlighted in the current framework, the discussion above demonstrates that the current legislation provides a workable foundation which can be improved upon in order to provide an effective and efficient system.

10.2 WHAT IMPROVEMENTS OR REFORMS TO THE LAW AND GOVERNANCE IN RESPECT OF ENVIRONMENTAL HEALTH ARE DESIRABLE FOR THE FUTURE?

Discussions in chapter 5 through to chapter 9 demonstrate that the law and governance of environmental health could be improved through various changes and reforms. Chapter 5, considered various options. These included improving national direction through an increased use of national planning instruments (national environmental standards and national policy statements). Increased policy guidance is also important. However care must be taken to ensure that the policy guidance provided includes real
“practical tools” like templates and guidelines instead of broad assertions of targets or goals which are difficult for local authorities to conceptualise and implement.\textsuperscript{1898}

The fragmented nature of the current framework, the lack of collaboration between parties and the underutilising of some parties demonstrated the importance of collaboration as a key theme of this thesis. Consolidation of environmental health functions was also considered. Minor consolidation would be preferable where there are administrative overlaps (i.e. the consolidation of back office functions of DHBs).\textsuperscript{1899}

However collaboration of existing parties is a more preferable option.\textsuperscript{1900} This preserves local democratic decision making (a central tenet of local government), and takes advantage of the various skills and expertise parties have already amassed through practice in the area. Discussions in regards to proposition one demonstrate that existing environmental and health legislation could be aligned to achieve a more effective system. This also supports collaboration as a mode of building on the current framework rather than the burden of replacing the current system.

Chapter 6, highlights the benefits of a collaborative approach to environmental health. This has been supported by the introduction of regional service plans\textsuperscript{1901} and increased usage of joint agreements and plans.\textsuperscript{1902} However further legislative change and direction is needed to put the necessary lateral connections into legislation to ensure parties coordinate with each other.\textsuperscript{1903}

The increased use of health impact assessment (HIA) in policy development is essential.\textsuperscript{1904} The use of HIAs will identify parties who are obligated to plan for environmental health in the one jurisdiction (i.e. regional council, territorial authorities and DHBs). Rather than plan separately, the HIA reinforces “cross-sectional

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\textsuperscript{1898} See discussion in Chapter 5, \textit{Environmental Health Functions of Central Government} and Chapter 7, \textit{Critical Analysis of Central and Local Governments’ Environmental Health Functions}.

\textsuperscript{1899} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.5.3.

\textsuperscript{1900} See discussion in Chapter 7, \textit{Critical Analysis of Central and Local Governments’ Environmental Health Functions}.

\textsuperscript{1901} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.5.4.

\textsuperscript{1902} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government} and Chapter 8, \textit{Environmental Health – Māori Perspective}.

\textsuperscript{1903} See discussion in Chapter 7, \textit{Critical Analysis of Central and Local Governments’ Environmental Health Functions}, at point 1.2.

\textsuperscript{1904} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.6.
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working” and will allow multiple parties to collaborate on integrated policy development which will effectively incorporate health into environmental planning. This may still result in local government establishing different plans, but it will ensure that these plans are coordinated with minimal overlap or contradiction. HIA should also ensure that areas that are missed with be identified. The HIA process will allow parties to join together to discuss their goals and objectives. This should improve understanding of environmental health legislation and aid in the alignment of goals and objectives for a more effective framework. This is also in keeping with the “whole-of-government” planning approach being advocated by central government.

Recent collaborations like the Land and Water Forum show an increased willingness, on the part of central government, to support collaborative approaches. The 2013 freshwater reforms and the introduction of a collaborative planning process option for councils is a significant step in the right direction. Given the success of the Land and Water Forum an Environmental Health forum is suggested as a viable reform option. This forum could enjoy the same positive benefits by drawing on a collaborative approach. The use of a forum would also be compatible with using HIA. The forum could also assist in creating a national objectives framework for environmental health which would provide further clarification for the environmental health framework. Alternatively the establishment of an independent environmental health coordinating body similar to the EnHealth Council in Australia, or the use of an Accord are also viable options.

The above suggested improvements or reforms have been formulated and proffered by the thesis writer. Parliament has also been considering various reforms which will impact on environmental health management. These reforms are referred to as the “better local government” reforms and 2013 resource management reforms at the beginning of chapter 9. As discussed in that chapter, some of the reforms, such as the

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1906 See discussion in Chapter 6, Environmental Health Functions of Local Government, at point 6.6.
1907 See discussion in Chapter 9, Proposed Solutions and Reforms, at point 9.6.
1908 See discussion in Chapter 9, Proposed Solutions and Reforms, at point 9.7.
1909 See discussion in Chapter 9, Proposed Solutions and Reforms, at point 9.5.
1910 See discussion in Chapter 9, Proposed Solutions and Reforms, at point 9.8.
1911 See discussion in Chapter 9, Proposed Solutions and Reforms, at points 9.1, 9.2 and 9.3.
change in purpose of local government, are unlikely to have a positive impact on the environmental health framework.\textsuperscript{1912}

It appears that reforms are pulled into two directions – either towards centralisation and national direction, or collaboration at local government level and devolution of authority.

Discussions in chapter 7, highlighted that the level of central government intervention required, will vary depending on the situation. Where matters have a purely localised impact, local government should provide planning. In other situations, national guidelines may be necessary to assist local government with structuring their plans to ensure national consistency. Finally, there may be some situations where the balance for national consistency outweighs the interest in local decision making, and in these situations, strong national guidance, such as NES or NPS may be required.\textsuperscript{1913}

However, where possible, the overriding preference should always be a system of collaboration and willing cooperation rather than regulation. It is important that the community and Maori\textsuperscript{1914} are also adequately provided for in consultation provisions.

\section*{10.3 RECENT CHANGES AND DEVELOPMENTS}

\subsection*{10.3.1 Local Government Act 2002 Amendment Act 2012}

Since the date of this thesis, the 1\textsuperscript{st} of December 2012, the Local Government Act 2002 Amendment Bill 2012 has been passed, resulting in an updated Local Government Act 2002. The Local Government Act 2002 Amendment Act 2012 received royal assent on the 4\textsuperscript{th} of December 2012, with all sections of the Act coming into force the next day\textsuperscript{1915} (with the exception of s 21 which comes into force on the 12\textsuperscript{th} of October 2013). With the passing of the Act Parliament has now changed the purpose of local government and removed references to promoting the “social, economic, environmental, and

\textsuperscript{1912} See discussion in Chapter 9, \textit{Proposed Solutions and Reforms}, at point 9.2.
\textsuperscript{1913} See discussion in Chapter 6, \textit{Environmental Health Functions of Local Government}, at point 6.1.4.
\textsuperscript{1914} See discussion in Chapter 8, \textit{Environmental Health – Maori Perspective}.
\textsuperscript{1915} Local Government Act 2002 Amendment Act 2012.
cultural well-being of communities”\textsuperscript{1916}. The replacement provision provides a requirement for local government to:\textsuperscript{1917}

meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

This issue of redefining the purpose of local government was discussed in chapter 9, \textit{Proposed Solutions and Reforms}, as a proposed government reform. The government passed the revised purpose section without any alterations from the bill (even though there was strong opposition from local government who unanimously rejected the changes).\textsuperscript{1918} The exact impact of this change is currently untested, though it is likely that clarification of the new purpose provision will be sought in the courts. The requirement to have regards to environment and well-being is still included in provisions in other environmental health statutes.\textsuperscript{1919} The recent inclusion of a well-being provision in the Canterbury Earthquake Recovery Act 2011 and the Local Government (Auckland Council) Act 2009 would suggest that Parliament may still tolerate a well-being focus, even though it is no longer a central tenet of local government. Further changes implemented in the Local Government Act 2002 Amendment Act 2012 include the removal of the reference to “sustainable development” from s 3(2), the purpose section of the Local Government Act 2002. However reference to sustainability survives under s 14(1)(h) which states:\textsuperscript{1920}

(1) In performing its role, a local authority must act in accordance with the following principles:-

(h) in taking a sustainable development approach, a local authority should take into account –

(i) the social, economic, and cultural interests of people and communities;

In is interesting to note that the reference to “well-being” has now been replaced with a reference to “interests” in s 14(1)(h)(i).\textsuperscript{1921} This could reflect Parliament’s intention to

\textsuperscript{1916} Local Government Act 2002, s 10(b).
\textsuperscript{1917} Local Government Act 2002 Amendment Act 2012, s 7.
\textsuperscript{1918} See discussion in chapter 9, \textit{Proposed Solutions and Reforms}.
\textsuperscript{1919} Resource Management Act 1991, s5(2); Local Government (Auckland Council) Act 2009, ss 10(b), 15(2)(c), 17(2)(b); Canterbury Earthquake Recovery Act 2011, s 3(g).
\textsuperscript{1920} Local Government Act 2002, s 14(1)(h).
\textsuperscript{1921} Local Government Act 2002 Amendment Act 2012, s 8 (2).
replace the phrase “well-being” with “interests” in the other environmental health acts mentioned above.

Further local government reforms are scheduled for 2013. These include a commitment to “develop a framework for central / local government regulatory roles”, which could have a significant impact in environmental health management.

10.3.2 The Progress of other Bills relevant to Environmental Health

Other bills (relevant to environmental health) which have been passed into legislation, since the date of this thesis, include the Local Government Act 2002 Amendment Bill (No 2), the Local Government (Auckland Council) Amendment Bill, Local Government (Auckland Transitional Provisions) Amendment Bill, Local Government (Alcohol Reform) Amendment Bill (236-3B) and the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill (63-1).

The Public Health Bill (177-2) and Food Bill (160-2) have been discussed throughout this thesis as containing important reforms relating to environmental health management. Unfortunately neither bill has progressed, and both are currently awaiting a second reading. It is unlikely that these two bills (introduced in 2007 and 2010 respectively) will be passed, without substantial reforms, to ensure that each bill is compatible with recent resource management and local government reforms. Other relevant bills that are currently before Parliament include the Alcohol Reform Bill (36-2), the Land Transport Management Amendment Bill (46-2), the Resource Management Reform Bill (93-1) and the Environmental Reporting Bill (189-1).

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1923 1st December 2012.
1924 Third reading took place on the 5th of December 2012 and given royal assent on the 11th of December 2012.
1925 Third reading took place on the 5th of December 2012 and given royal assent on the 11th of December 2012.
1926 Third reading took place on the 5th of December 2012 and given royal assent on the 11th of December 2012.
1927 Third reading took place on the 11th of December 2012 and given royal assent on the 18th of December 2012.
1928 Third reading took place on the 28th of February 2013 and given royal assent on the 4th of March 2013.
1929 This bill has had its second reading on 13th of September 2011. The Sale and Supply of Liquor Act 2013 has passed since the date of this thesis and comes progressively into affect through 2013.
1930 This bill had its first reading on the 11th of September 2010. The select committee reported back on the 5th of March 2013 and the bill is currently awaiting its second reading.
1931 This bill had its first reading on the 11th of December 2012. Since the date of this thesis, the Act has now passed and been named the Resource Management Amendment Act 2013 (coming into force on the 4th of September 2013). See also Local Government (Auckland Transitional Provisions) Amendment Act 2013 which came out of the RMA Bill and came into force on the 4th of September 2013.
10.3.3 Future Initiatives - Freshwater Forum 2013

As discussed in chapter 9, Proposed Changes and Reforms, the Land and Water Forum had been working on a freshwater project and reporting back to the Ministry for the Environment. The third and final Land and Water Forum report was released in 2012.\textsuperscript{1933} In March 2013 the government released their proposals for freshwater management in New Zealand, in their document “Freshwater Reform 2013 and Beyond”. These proposals are available for public submission until Monday the 8\textsuperscript{th} of April 2013.

While this proposal was released after the date of this thesis (1\textsuperscript{st} of December 2012), a discussion has been included here as the proposal illustrates three key shifts in central government behaviour which could have a major impact on environmental health management in New Zealand.

These key shifts include:-

1. An intention to increase the use of national instruments (such as National Policy Statements) to provide national direction.
2. An intention to increase the use of national guidance to assist local government.
3. A formal introduction of “collaborative planning” as an option for councils in council planning.

These three changes, particularly the final initiative (on collaborative planning) directly address many of the issues currently experienced in environmental health management (a lack of national direction, a fragmented framework, and lack of effective cohesion between parties).

Central government has confirmed that local government will continue to play “a fundamental role in freshwater management”.\textsuperscript{1934} However central government has renewed a commitment to “work closely with them to provide direction, guidance and

\textsuperscript{1932} This bill was introduced on the 20\textsuperscript{th} of February 2014. The bill makes it mandatory for government bodies to produce regular environmental reports. These reports will provide information on “five key environmental domains - air, climate and atmosphere, freshwater, marine and land”. See Amy Adams “Environmental Reporting Bill Introduced” beehive.govt.nz (20 February 2014). This mandatory reporting of comprehensive environmental information across government bodies will assist in improving coordination between parties.


\textsuperscript{1934} Ministry for the Environment Freshwater Reform 2013 and Beyond (Ministry for the Environment, Wellington, 2013) at 9.
support”.\textsuperscript{1935} This is significant as a “lack of central government direction” is a reoccurring theme in environmental health management.

10.3.4 An intention to increase the use of national instruments (such as National Policy Statements) to provide national direction

The reforms propose a “National Objectives Framework”\textsuperscript{1936} to facilitate the creation of National Policy Statements (NPS). The reference to a “national objectives framework” is new to central government planning, operations and outcomes. The framework recognises that more central government direction is required in regards to “the approach, methods and processes to be used under the National Policy Statement for Freshwater Management 2011”.\textsuperscript{1937} A national framework will address these issues and provide many benefits, including the pooling of scientific resources, national consistency and the opportunity for iwi values to be recognised on a national scale. In establishing the National Objectives Framework, central government also intends to require that “all water bodies meet the minimum state for ecosystem health and human health”.\textsuperscript{1938} This recognition of human health, next to environmental health is significant as it includes a “human health focus” which has been missing from recent resource management reforms. The introduction of national bottom lines (as per the Land and Water Forum’s suggestion) will ensure that a set level of environmental health management is enforced nationally.

10.3.5 An intention to increase the use of national guidance to assist local government

Central government has increased the use of its national guidance tool to reach its national objectives. Guidance tools provide a useful way for central government to assist local government in achieving its objectives, while still allowing for regional variation.

\textsuperscript{1935} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington, 2013) at 9.
\textsuperscript{1936} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington, 2013) at 28.
\textsuperscript{1937} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington, 2013) at 28.
\textsuperscript{1938} Ministry for the Environment \textit{Freshwater Reform 2013 and Beyond} (Ministry for the Environment, Wellington, 2013) at 29.
These new guidance tools mainly revolve around educating regional councils. Central government intends to develop “good management practice toolkits”, guidelines on implementing NPS provisions, water permits and models on water quality.

If this increased national guidance is coupled by a commitment to work closely with local government (as currently indicated by central government) this will allow the opportunity for feedback on the guidelines and create a stronger working relationship between the two parties and a better freshwater management system.

10.3.6 A formal introduction of “collaborative planning” as an option for councils in council planning.

The endorsement of “collaborative planning” by central government, and the introduction of it as an option for councils in planning, is the most exciting initiative to come out of the Freshwater Forums. This is supported by the growing trends (described throughout this thesis) to use collaborative, or cooperative approaches to deal with environmental health issues. The adoption of the approach here also means that future government reform in this area is likely to support community participation and a collaborative planning process.

The initiative will involve the RMA being amended so that councils can choose either the traditional approach or a “collaborative planning process” when “preparing, changing and reviewing freshwater policy statements and plans”. If councils choose to use the collaborative planning process, the council will select a “collaborative stakeholder group”. This will involve representatives from the local community, Maori, and other parties with “a major interest in the water body”. This occurs at the very start of the planning initiative to ensure maximum opportunities for consultation.

However, the council will still maintain some control over the situation. The council will be responsible for setting the terms of reference and it will “retain responsibility for

1940 Ministry for the Environment Freshwater Reform 2013 and Beyond (Ministry for the Environment, Wellington, 2013) at 25.
approving a plan for notification”. Once the plan is notified an independent hearing panel with a “majority of non-council commissioners” will be used to assess public submissions. This collaborative consultation process will also provide for increased Maori consultation and involvement. Iwi will be afforded the same opportunity as in current provisions, to provide advice and make recommendations. However a statutory requirement is introduced to ensure that iwi “advice and recommendations [are] explicitly considered before decisions are made”. This is a clear strengthening of the current Maori consultation provisions discussed in chapter 8, *Environmental Health – Maori Perspective*.

The use of collaborative approaches here will result in better plans that adequately provide for the needs of the local community, and recognises the government’s obligations under the principles of the Treaty of Waitangi.

This change in system could initially create difficulties in implementation by increasing the length and cost of consultation. However central government aims to provide guidance to local government, in the form of education and extra funding to assist with these issues. This collaborative planning option is expected to be included as part of the Resource Management Reform Bill 2013 (yet to be introduced).

### 10.4 CONCLUSION

New Zealand needs to continue to develop this collaborative approach to environmental health management. This allows all the parties to come together in a neutral environment and maintain their independence. This is important as no party wants to surrender their authority or admit their short comings. While the current system is fragmented between many different parties, the reallocating of functions and powers only creates superficial changes, and does not address the underlying problems in the system. Instead government should focus on improving the network connections between the current parties.

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Parliament needs to be active in clarifying the parameters of environmental health so that the area can be more readily managed. Legislative reforms should focus on improving national direction, creating lateral connections between parties (to encourage cooperative initiatives) and consolidating the core functions, powers and duties of each party into one statute, to clarify roles and jurisdictions.

Before any reforms are made, central government needs to be sure that the reform will result in real change, and not merely a reallocation of resources and funding, and a change in authority. Change in political party inevitably leads to changes in environment, local government and health reform. Without the long-term commitment of present and future governments it is difficult to establish long-term changes and ensure that an integrated environmental health system is established and maintained. This area is subject to political conflict, with voter pressure from rate payers and tax payers. As a result it is difficult to get change in a consistent direction. Accordingly, there needs to be an on-going commitment to these changes so that real results have a chance of being achieved.

Returning to the two propositions set out in the beginning of this thesis, the law and governance relating to environmental health in New Zealand is not appropriate for the 21st century, for the reasons outlined in earlier chapters, and requires substantial reform. As stated collectively in the chapters of this thesis, there are major pointers towards a need for a principled collaborative approach which will bring the legislation together into an integrated environmental health framework.
# APPENDICES

## Table of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACEH</td>
<td>Australian Charter for Environmental Health</td>
</tr>
<tr>
<td>AHPC</td>
<td>Australian Health Protection Committee</td>
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<tr>
<td>ARPHS</td>
<td>Auckland Regional Public Health Service</td>
</tr>
<tr>
<td>COP</td>
<td>Community Outcome Processes</td>
</tr>
<tr>
<td>CCR Act</td>
<td>Climate Change Response Act 2002</td>
</tr>
<tr>
<td>Conservation Act</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td>DHB</td>
<td>District Health Board</td>
</tr>
<tr>
<td>DIA</td>
<td>Department of Internal Affairs</td>
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<tr>
<td>ECan</td>
<td>Environment Canterbury (Canterbury Regional Council)</td>
</tr>
<tr>
<td>EHA</td>
<td>Environmental Health Australia</td>
</tr>
<tr>
<td>EHO</td>
<td>Environmental Health Officer</td>
</tr>
<tr>
<td>EnHealth</td>
<td>EnHealth Council (Australia)</td>
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<tr>
<td>EPA</td>
<td>Environmental Protection Authority</td>
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<tr>
<td>EPA Act</td>
<td>Environmental Protection Authority Act 2011</td>
</tr>
<tr>
<td>ERMA</td>
<td>Environmental Risk Management Authority</td>
</tr>
<tr>
<td>HPO</td>
<td>Health Protection Officer</td>
</tr>
<tr>
<td>HSNO</td>
<td>Hazardous Substances and New Organisms Act 1996</td>
</tr>
<tr>
<td>IFEH</td>
<td>International Federation of Environmental Health</td>
</tr>
<tr>
<td>LGA</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>MAF</td>
<td>Ministry of Agriculture and Forestry</td>
</tr>
<tr>
<td>MED</td>
<td>Ministry of Economic Development</td>
</tr>
<tr>
<td>MiE</td>
<td>Ministry for the Environment</td>
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<tr>
<td>MoH</td>
<td>Ministry of Health</td>
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<tr>
<td>MPI</td>
<td>Ministry for Primary Industries</td>
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<tr>
<td>MSD</td>
<td>Ministry of Social Development</td>
</tr>
<tr>
<td>NEHAP</td>
<td>National Environmental Health Action Plan</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>NES</td>
<td>National Environmental Standards</td>
</tr>
<tr>
<td>NPS</td>
<td>National Policy Statements</td>
</tr>
<tr>
<td>NZFSA</td>
<td>New Zealand Food Safety Authority</td>
</tr>
<tr>
<td>NZIEH</td>
<td>New Zealand Institute of Environmental Health</td>
</tr>
<tr>
<td>NZPHDA</td>
<td>New Zealand Public Health and Disability Act 2000</td>
</tr>
<tr>
<td>NZWWA</td>
<td>New Zealand Waste Water Association</td>
</tr>
<tr>
<td>PHAC</td>
<td>Public Health Advisory Committee</td>
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<tr>
<td>RMA</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>LTCCP</td>
<td>Long term Council Community Plan</td>
</tr>
<tr>
<td>LGA</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>LGNZ</td>
<td>Local Government New Zealand</td>
</tr>
<tr>
<td>OSH</td>
<td>Occupational Health and Safety</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCED</td>
<td>United Nations Conference on Environment and Development</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations International Childrens Emergency Fund</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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</tbody>
</table>
This flowchart provides a basic representation of the main central government and local government parties involved in environmental health. The advisory committees represented are mandatory. Optional committees or boards may also be established. Other Ministers or Government Departments also administer environmental health legislation (see Central Government Table in appendices). Note: Not all parties have been included in order to simplify the flowchart.
<table>
<thead>
<tr>
<th>Central Government</th>
<th>Environmental Health Acts Administered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canterbury Earthquake Recovery Authority</td>
<td>Canterbury Earthquake Recovery Act 2011</td>
</tr>
<tr>
<td>Earthquake Commission</td>
<td>Earthquake Commission Act 1993</td>
</tr>
<tr>
<td>Ministry of Business, Innovation and Employment</td>
<td>Housing Accords and Special Housing Areas Act 2013</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>Ministry of Civil Defence &amp; Emergency Management</td>
<td>Civil Defence Emergency Management Act 2002</td>
</tr>
<tr>
<td>Minister of Energy</td>
<td>Atomic Energy Act 1945</td>
</tr>
<tr>
<td>Ministry of Fisheries</td>
<td>Fisheries Act 1996</td>
</tr>
<tr>
<td>Ministry of Foreign Affairs &amp; Trade</td>
<td>Antarctica (Environmental Protection) Act 1994</td>
</tr>
<tr>
<td>Ministry of Transport</td>
<td>Land Transport Act 1998</td>
</tr>
<tr>
<td>New Zealand Customs Service</td>
<td>Customs and Excise Act 1996</td>
</tr>
<tr>
<td>State Services Commission</td>
<td>Crown Entities Act 2004</td>
</tr>
<tr>
<td>Treasury</td>
<td>Crown Entities Act 2004</td>
</tr>
</tbody>
</table>

**Central Government Table**
Committees Table – Relevant to Environmental Health

Committees are formed to give advice and provide consultation to the government.

<table>
<thead>
<tr>
<th>LEGISLATION NAME</th>
<th>COMMITTEE NAME</th>
<th>SECTION</th>
<th>ROLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation Act 1987</td>
<td>Various Committees</td>
<td>s 56</td>
<td>Minister has the power to create Advisory Committees under the Act (s 56).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>s 6C</td>
<td>New Zealand Conservation Authority can create Committees and delegate powers and functions to the committees (s 6C).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>s 19(2)&amp;(3)</td>
<td>Governor-General can establish committee to provide advice to the Minister on conservation park management (s 19).</td>
</tr>
<tr>
<td>Environment Act 1986</td>
<td>Various Committees</td>
<td>s 33</td>
<td>Minister can establish committees to advise or assist “on such matters relating to the functions of the Minister or Ministry” (s 33).</td>
</tr>
<tr>
<td>Environmental Protection Authority Act 2011</td>
<td>Maori Advisory Committee</td>
<td>s 18</td>
<td>Maori advisor to the Environmental Protection Authority (covers various areas of environmental health). The Maori Advisory Committee was established under the Act (s 18) to provide advice and assistance to the EPA “from the Maori perspective” on “matters relating to policy, process and decisions of the EPA” (s 19(1)&amp;(2)). Advice must be given with the “terms of reference” set by the EPA (s 20)</td>
</tr>
<tr>
<td>Hazardous Substances and New Organisms Act 1996</td>
<td>Committees</td>
<td>s 18, s 18A, s 19(2)(b)</td>
<td>EPA has the power to appoint committees (s 18). Committee may in turn appoint and delegate to a subcommittee (s 18A). EPA can delegate to the committee the power to hear applications submitted under Part 5 or 6A of the Act (s 19(2)(b)).</td>
</tr>
<tr>
<td>Persistent Organic Pollutants Review Committee</td>
<td>Sch 1AA, Art 8, 3.</td>
<td>Committee examines proposals referred by the Secretariat (2). Committee will examine the proposal and apply screening criteria (3), prepares a draft risk profile (6) and make a recommendation regarding the listing of the chemical (and related control measures) (9).</td>
<td></td>
</tr>
<tr>
<td>Health Act 1956</td>
<td>Committee</td>
<td>s 117(x)</td>
<td>Governor-General empowered to make regulations to organise local committees “to assist in giving effect to the provisions of this Act” in disease epidemics (s 117(x)).</td>
</tr>
<tr>
<td>Local Government (Auckland Council) Act 2009</td>
<td>Auckland Council Committees</td>
<td>s 85</td>
<td>Auckland mayor has the power to establish committees (s 9(1)(c)). Auckland Council Committees</td>
</tr>
</tbody>
</table>
“deal with the management and stewardship of natural and physical resources” (s 85(1)). Maori Statutory Board can establish committees “it considers necessary to enable it to carry out its purpose” (s 86(2)). Local Government Commission may delegate functions to committee (s 99(1)).

<p>| New Zealand Public Health and Disability Act 2000 | Committees | s 11 | Minister can establish committees “for any purpose related to the Act” (s 11(1)(a)). Committee has such powers as determined by the Minister (s 11(2)). |
| National Advisory Committee on Health and Disability (NACHD) | | s 13 | Minister may establish this committee using its powers in s 11. The NACHD advises the Minister on public funding on services (s 13(1)(a)), “matters relating to public health” (both personal and regulatory) (s 13(1)(b)(i)&amp;(ii)), and “any other matters that the Minister specifies” (s 13(1)(c)). The committee must complete consultation prior to providing advice (s 13(2)) and must “at least once a year, deliver to the Minister a report setting out its advice” (s 13(3)). |
| Public Health Advisory Committee | s 14 | The NACHD must establish a PHAC to provide independent |</p>
<table>
<thead>
<tr>
<th>(PHAC)</th>
<th>advice to the NACHD and the Minister (s 14(1)). Advice includes the promotion and monitoring of public health and other public health issues including “factors underlying the health of people and communities” (s 14(1)(a)(b) &amp; (c)) and “any other matters” (s 14(1)(d)). The committee must complete consultation prior to providing advice (s 14(2)). The Minister must forward PHAC’s advice to the House of Representatives (s 14(3)).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Workforce Advisory Committee</td>
<td>s 15</td>
</tr>
<tr>
<td>National Advisory Committee on Health and Disability Support Services Ethics</td>
<td>s 16</td>
</tr>
<tr>
<td>Mortality Review Committees (MRC)</td>
<td>s 59E</td>
</tr>
</tbody>
</table>
Commission (HQSC) may appoint a MRC to review, report and advise on matters of mortality (s 59E(1)(a)&(b)). The MRC must develop “strategic plans and methodologies that are designed to reduce morbidity and mortality” (s 59E(2)(a)) and “are relevant to the committees functions” (s 59E(2)(b)).

<table>
<thead>
<tr>
<th>Committee</th>
<th>Section(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community and Public Health Advisory Committee (CPHAC)</td>
<td>s 5(4) s 34 (CPHAC)</td>
</tr>
<tr>
<td>Disability Support Advisory Committee (DSAC)</td>
<td>s 35 (DSAC)</td>
</tr>
<tr>
<td>Hospital Advisory Committee (HAC)</td>
<td>s 36 (HAC)</td>
</tr>
</tbody>
</table>

The Board of each District Health Board (DHB) must establish these three advisory committees (and has the power to create other advisory committees) (s 5(4)).

The CPHAC provides advice on “health improvement measures” (s 34), the DSAC provides advice on “disability issues” (s 55) and the HAC provides advice on “matters relating to hospitals” (s 36). All three committees must provide for Maori representation (compulsory requirement).
## Advisory Boards Table – Relevant to Environmental Health

Boards are formed to give advice and provide consultation to the government.

<table>
<thead>
<tr>
<th>LEGISLATION</th>
<th>COMMITTEE NAME</th>
<th>ROLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation Act 1987</td>
<td>Conservation Board</td>
<td>The Minister establishes Conservation Boards and assigns to different jurisdictions (s 6L). The Conservation Boards are involved in conservation management strategies (s 6M(1)(a)), conservation management plans (s 6M(1)(b)), providing advice to the Conservation Authority and Director-General (s 6M(1)(c)&amp;(d)) and exercising “such functions and powers as may be delegated to it” (s 6M(1)(g)).</td>
</tr>
<tr>
<td>Waste Minimisation Act 2008</td>
<td>Waste Advisory Board</td>
<td>The Waste Advisory Board is established in s 89 of the Act. The Boards function is to “provide advice to the Minister upon request” (s 90(1)). This includes waste minimisation advice on declaring priority products (s 90(1)(a)), product stewardship schemes (s 90(1)(b),(c) &amp; (d)), recommending the making of regulations (s 90 (1)(e)(h)&amp;(i)), funding criteria (s 90(1)(f)) and levies (s 90(1)(g)). The Boards advice must be within the terms of reference (s 90 (3)) set in s 91.</td>
</tr>
<tr>
<td>Local Government (Auckland Council) Act 2009</td>
<td>Independent Maori Statutory Board</td>
<td>Maori Advisory Role to the Auckland Council. The independent board promotes issues of significance for Mana Whenua Groups and Mataawaka of Tamaki Makaurau. The purpose of the board includes “promoting cultural, economic, environmental, and social issues” for Maori (s 81). The board develops a schedule of interests, advises Auckland Council and helps</td>
</tr>
<tr>
<td>Auckland Council fulfil statutory responsibilities to Maori (s 84).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# References to Maori in Environmental Health Legislation

<table>
<thead>
<tr>
<th>REFERENCE TO MAORI</th>
<th>SECTION</th>
<th>LEGISLATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty of Waitangi provisions.</td>
<td>s 4</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td></td>
<td>ss 8, 45</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td></td>
<td>s 8</td>
<td>Hazardous Substances and New Organisms Act 1996</td>
</tr>
<tr>
<td></td>
<td>s 4</td>
<td>New Zealand Public Health and Disability Act 2000</td>
</tr>
<tr>
<td></td>
<td>s 4</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td></td>
<td>s 3A</td>
<td>Climate Change Response Act 2002</td>
</tr>
<tr>
<td></td>
<td>s 4</td>
<td>Land Transport Management Act 2003</td>
</tr>
<tr>
<td></td>
<td>s 4(b)</td>
<td>Environmental Protection Authority Act 2011</td>
</tr>
<tr>
<td></td>
<td>s12</td>
<td>Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</td>
</tr>
</tbody>
</table>

## Consultation

Obligation to consult with the Minister of Maori Affairs:-

- For appointment of committee, commission or board members. | ss 6D, 6P | Conservation Act 1987 |
| - | s 33 | Local Government Act 2002 |
| - | s 93(4) | Waste Minimisation Act 2008 |
| - | s 202 | Resource Management Act 1991 |
| - | s 254 | Resource Management Act 1991 |

Consultation with Maori must take place:- | s 3A | Climate Change Response Act 2002 |
<table>
<thead>
<tr>
<th>For the preparation of pest management strategies.</th>
<th>s 73</th>
<th>Biosecurity Act 1993</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principles for consultation with local authorities.</td>
<td>s 82</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>Consultation on reorganisation of local authorities proposals.</td>
<td>s 37(1)(vii) &amp; (viii)</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>With appropriate iwi authorities during the preparation and approval of the Minister of Conservation’s statements of general policy.</td>
<td>s 17B</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td>During preparation and approval of conservation management strategies.</td>
<td>s 17F</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td>During preparation, approval, review and amendment of freshwater fisheries management plans.</td>
<td>s 17K</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td>Local authorities must consult during the preparation of a proposed policy statement or plan.</td>
<td>s 3 &amp; sch 1, s 3</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Consultation on making national environmental standards.</td>
<td>s 44</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Consultation on making national policy statements.</td>
<td>s 46</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Consultation with iwi authorities on a proposed regional coastal plan.</td>
<td>sch 1, s 2</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Consultation with Iwi on proposed regulations</td>
<td>s 12(b)</td>
<td>Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</td>
</tr>
<tr>
<td>What is required to satisfy consultation with iwi authorities (establishing processes to provide for iwi consultation, consulting, assisting iwi to enable them to consult).</td>
<td>sch 1, s 3B</td>
<td>Resource Management Act 1991</td>
</tr>
</tbody>
</table>
**IWI AUTHORITY (A RECOGNISED FORM OF PUBLIC AUTHORITY)**

<table>
<thead>
<tr>
<th>Iwi Authority Planning Documents:</th>
<th>s 61</th>
<th>Resource Management Act 1991</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Regional council must take these</td>
<td></td>
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<tr>
<td>into account when preparing or</td>
<td></td>
<td></td>
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<tr>
<td>changing a regional policy</td>
<td></td>
<td></td>
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<tr>
<td>statement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Territorial authorities must</td>
<td>s 74</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>take these into account when</td>
<td></td>
<td></td>
</tr>
<tr>
<td>preparing or changing a district</td>
<td></td>
<td></td>
</tr>
<tr>
<td>plan.</td>
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</tr>
</tbody>
</table>

| A local authority may transfer  | s 33 | Resource Management Act 1991 |
|its powers to another public     |      |                               |
|authority (which includes an iwi |      |                               |
|authority).                      |      |                               |

| Local authorities have the power | s 36B | Resource Management Act 1991 |
|to make joint management         |      |                               |
|agreements. Where this happens,  |      |                               |
|the local authority must satisfy |      |                               |
|itself that each iwi authority or |      |                               |
|hapu representation group is a   |      |                               |
|party to the agreement.          |      |                               |

**ENABLING MAORI PARTICIPATION**

| Maori must be provided with     | s 14(1)(d) | Local Government Act 2002 |
|opportunity to contribute to the | s 40(a)    | Local Government (Auckland |
|decision-making process.        |            | Council) Act 2009         |
|                                | ss 75(b), 81| Local Government Act 2002  |
|                                | sch 10, ss 8|                               |
|                                | & 35       |                               |
|Maori must be provided with an  | s 23(1)    | New Zealand Public Health and |
|opportunity to participate and   |      | Disability Act 2000          |
|contribute to Maori health       |      |                               |
|improvement.                     |      |                               |

| A local authority has a duty to | s 35A    | Resource Management Act 1991 |
|keep records about iwi and hapu  |      |                               |
|within its region or district.   |      |                               |

<p>| Establishment of Maori Advisors:| ss 81 - 85 | Local Government (Auckland |
|                                 | s 84, 85  | Council) Act 2009          |
|                                 | s 86      |                               |
|                                 | s 88      |                               |
|                                 | s 88      |                               |</p>
<table>
<thead>
<tr>
<th>Maori Advisory Committee:</th>
<th>ss 4, 18, s 19, s 20, ss 12(a) &amp; 18</th>
<th>Environmental Protection Authority Act 2011, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Functions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Terms of Reference set by Environmental Protection Authority.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Maori Advisory Committee may give advice so decisions are informed from a “Maori perspective”.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PROVISION OF INFORMATION TO MAORI**

Maori must be provided with copies of:-

<table>
<thead>
<tr>
<th>Maori Advisory Committee:</th>
<th>ss 4, 18, s 19, s 20, ss 12(a) &amp; 18</th>
<th>Environmental Protection Authority Act 2011, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Proposed pest management strategies (to tangata whenua).</td>
<td>s 78(3)</td>
<td>Biosecurity Act 1993</td>
</tr>
<tr>
<td>- Joint committee proposals (to affected Maori organisations and Te Puni Kokiri).</td>
<td>s 12(3)(vii) &amp; (viii)</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>- The Minister of Conservation’s Discussion Document.</td>
<td>s 26ZZ</td>
<td>Conservation Act 1987</td>
</tr>
<tr>
<td>- Local authority’s proposed policy statement or plan (given to iwi authorities for tangata whenua of the area).</td>
<td>sch 1, s 5</td>
<td>Resource Management Act 1991</td>
</tr>
</tbody>
</table>

The EPA must notify “iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.”

Maori must be served with:-

<table>
<thead>
<tr>
<th>Maori Advisory Committee:</th>
<th>ss 4, 18, s 19, s 20, ss 12(a) &amp; 18</th>
<th>Environmental Protection Authority Act 2011, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Notice of the making of an Order in Council (served to iwi authorities for tangata whenua of the area).</td>
<td>s 154</td>
<td>Resource Management Act 1991</td>
</tr>
</tbody>
</table>
## ACKNOWLEDGING MAORI

**Tikanga Maori:**

- Matters will be exercised in accordance with tikanga Maori.
  - s 3  
  - Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010

- Proceedings will recognise tikanga Maori.
  - s 186  
  - Building Act 2004

- Board of Inquiry will recognise tikanga Maori.
  - s 3  
  - Biosecurity Act 1993
  - s 77  
  - New Zealand Public Health and Disability Act 2000

- Hearings will recognise tikanga Maori.
  - ss 39, 269  
  - Resource Management Act 1991

**Appointed members (commissioners, board members, etc) must include those with knowledge or expertise in tikanga Maori.**

- s 149K
- s 33(2)(a)
- s 93(5)(f)
- s 14(1)(d)
- ss 9(3) & 10
- sch 3, s 5(1) & 5(2)(c)
- Resource Management Act 1991
- Local Government Act 2002
- Waste Minimisation Act 2008
- Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010
- Environmental Protection Authority Act 2011
- New Zealand Public Health and Disability Act 2000

**Or members must undergo training for this knowledge with records of knowledge being kept on record by board.**

**Purpose of Act refers to Maori:**

- includes promoting issues of significance for Manawhenua groups and Mataawaka groups for Auckland.
  - s 3(f)
  - Local Government (Auckland Council) Act 2009

- includes reducing health disparities and improving health benefits for Maori.
  - ss 3(1)(b), 5(3)(c), 22
  - New Zealand Public Health and Disability Act 2000

**Local authorities must provide information on Maori representation arrangements or liaising agreements or policies.**

- s 40(1)(d) & (i)
- Local Government Act 2002
Local authorities must recognise Maori needs when acting as an employer.

<table>
<thead>
<tr>
<th>CONSIDERATION OF MAORI INTERESTS</th>
<th>S 36</th>
<th>Local Government Act 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maori sensitive information will be protected during hearings to avoid serious offence to tikanga Maori or disclosure of wahi tapu.</td>
<td>S 6, S 42</td>
<td>Biosecurity Act 1993, Resource Management Act 1991</td>
</tr>
<tr>
<td>Kaitiakitanga.</td>
<td>S 3</td>
<td>Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010</td>
</tr>
<tr>
<td></td>
<td>S 7</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Tangata whenua cultural well-being.</td>
<td>S 9</td>
<td>Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010</td>
</tr>
<tr>
<td></td>
<td>S 10 (b)</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>Taonga.</td>
<td>S 9</td>
<td>Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010</td>
</tr>
<tr>
<td>Acknowledgement of the relationship of Maori to lands, water, sites, wahi tapu or taonga.</td>
<td>S 17</td>
<td>Environment Act 1986</td>
</tr>
<tr>
<td></td>
<td>S 57, 60, 72</td>
<td>Biosecurity Act 1993</td>
</tr>
<tr>
<td></td>
<td>S 6</td>
<td>Hazardous Substances and New Organisms Act 1996</td>
</tr>
<tr>
<td></td>
<td>S 77</td>
<td>Local Government Act 2002</td>
</tr>
<tr>
<td>Recognition and provision for the relationship of Maori to lands, water, sites, wahi tapu or taonga as a matter of national importance.</td>
<td>S 6</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>Taking of geothermal water in accordance with tikanga Maori for tangata whenua (permitted as an exception to a general restriction on taking and using water).</td>
<td>S 14</td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td>A coastal policy statement must provide for protection of characteristics of the coastal environment which are of special value to tangata whenua.</td>
<td>S 58</td>
<td>Resource Management Act 1991</td>
</tr>
</tbody>
</table>
Regional policy statements must state the resource management issues of significant to iwi authorities.  

Regional councils should consider preparing a regional plan in various situations, including where tangata whenua have significant concerns.

A water conservation order may be used to provide for the protection of water with tikanga Maori significance.

Minister and the EPA must “take into account the effects of activities on existing interests” (which could include Maori interests).

<table>
<thead>
<tr>
<th>MAORI REPRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Compulsory Maori representation:</strong></td>
</tr>
<tr>
<td>- On District Health Boards proportional to Maori in DHB’s population (with a minimum of two Maori on each board).</td>
</tr>
<tr>
<td>- On Community and Public Health Advisory Committee.</td>
</tr>
<tr>
<td>- On Disability Support Advisory Committee.</td>
</tr>
<tr>
<td>- On Hospital Advisory Committee.</td>
</tr>
<tr>
<td>- On Conservation Boards.</td>
</tr>
<tr>
<td><strong>Other Maori representation:</strong></td>
</tr>
<tr>
<td>- Board must attempt to ensure representation for Maori.</td>
</tr>
</tbody>
</table>

The remaining core environmental health Acts provide no direct reference to Maori, Tangata Whenua, Iwi, the Treaty of Waitangi or to the concepts of Kaitiakitanga or Taonga:-

Canterbury Earthquake Recovery Act 2011
Health Act 1956
Health and Safety in Employment Act 1992
Imports and Exports (Restrictions) Act 1988
Ozone Layer Protection Act 1996
Acts Relevant to Environmental Health Management

Due to the diverse nature of environmental health the concept is not provided for in a single piece of legislation. Accordingly an alphabetical list has been used to document the various Acts relevant to environmental health management.

A

Accident Compensation Act 2001

Act is administered by the Department of Labour.
Act establishes New Zealand’s ACC scheme. Scheme includes a focus on ‘prevention’ of personal injury.
s 3 – Purpose includes “promoting measures to reduce personal injury”.
s 263 – states “a primary function of the corporation is to promote measures to reduce the incidence and severity of personal injury, including measures that create supportive environments that reduce the incidence and severity of personal injury”.

Alcohol Advisory Council Act 1976

Act is administered by the Ministry of Health.
Act establishes the Alcohol Advisory Council of NZ who is involved in encouraging responsible use of liquor and minimising personal, social and economic harm from misuse (s 1A).

Alcoholism and Drug Addiction Act 1966

Act is administered by the Ministry of Health.
Act provides for the care of people with alcohol and drug addictions.

Animal Products Act 1999

Act is administered by the Ministry of Agriculture and Forestry.
Object of the Act is to “minimise and manage risks to human or animal health arising from production and processing of animal material and products” (s 2).

Antarctica (Environmental Protection) Act 1994

Act is administered by the Ministry of Foreign Affairs and Trade.
Act provides comprehensive protection of the Antarctic environment (s 9) and “implements the protocol on environmental protection to the Antarctic treaty”.

Atomic Energy Act 1945

Act is administered by the Minister of Energy.
Provides control for atomic energy production (including control of Uranium mining).

B

Biosecurity Act 1993

Act is administered by the Ministry of Agriculture and Forestry.
Act outlines the functions and powers of local and central government in regards to environmental health concerns from pest management.
Building Act 2004

Act is administered by the Department of Building and Housing. Together with the Resource Management Act this Act provides functions and powers in regards to building. Act considers environmental health provisions.

Burial and Cremation Act 1964

Act is administered by the Ministry of Health. Act states that Local Authorities are to establish, maintain and regulate cemeteries, regulate cremation and provide provision to regulate burial and cremation of deceased persons.

Cancer Registry Act 1993

Act is administered by the Ministry of Health. Act provides for compilation of a statistical cancer record (for research and prevention).

Canterbury Earthquake Recovery Act 2011

Act is administered by the Canterbury Earthquake Recovery Authority (CERA). Act provides for Local Authorities to respond to impacts from the Canterbury earthquake (an Act relating to a specific event which overrides certain aspects of environmental and planning law). Act provides for Minister and CERA to have adequate statutory powers (s 3), to aid in rebuild and “restore the social, economic, cultural and environmental well-being of greater Christchurch communities” (s 3(g)).

Civil Defence Emergency Management Act 2002

Act is administered by the Ministry of Civil Defence and Emergency Management. The Act’s purpose is to “improve and promote sustainable management of hazards…in a way that contributes to the social, economic, cultural and environmental well-being and safety of the public” (s 3(a)). Act integrates emergency management at both local and national government level.

Climate Change Response Act 2002

Act is administered by the Ministry for the Environment. Act provides for international conventions (Kyoto protocol etc).

Conservation Act 1987

Act is administered by the Department of Conservation. Act establishes Minister of Conservation, Department of Conservation, New Zealand Conservation Authority and Conservation Boards. Act also establishes functions and powers of these bodies under the Act.

Coroners Act 2006

Act is administered by the Ministry of Justice. Act provides for investigation into deaths in order to identify causes and circumstances. This information is then used to prevent similar deaths in the future (s 3(1)).

Crown Entities Act 2004

Act is administered by the State Services Commission and the Treasury. Act provides a consistent framework for establishment, governance and operation of crown entities (s 3).
Customs and Excise Act 1996

Act is administered by the New Zealand Customs Service. Act contains powers for custom officers to detain where threat of infectious disease or risk to health or safety of persons. Entry of goods also considers threats to health and safety.

Dog Control Act 1996

Act is administered by the Department of Internal Affairs. Act provides for the control of dogs.

Earthquake Commission Act 1993

Act is administered by the Earthquake Commission. The Act establishes the Earthquake Commission. The Act is primarily about earthquake insurance but in s 5 also looks at the “methods of reducing or preventing natural disaster damage”.

Electricity Act 1992

Act is administered by the Ministry of Economic Development. The Act’s role is to regulate the supply and use of electricity in New Zealand. Purpose of Act is also to protect “the health and safety of members of the public in connection with the supply and use of electricity in New Zealand” (s 1A(c)). (The Electricity Industry Act 2010 provides a framework for the regulation of the electricity industry).

Energy Efficiency and Conservation Act 2000

Act is administered by the Ministry for the Environment. The purpose of the Act is to promote “energy efficiency, energy conservation, and the use of renewable sources of energy” (s 5). Any persons exercising any “responsibilities, powers, or functions” must consider sustainability principles (s 6).

Environment Act 1986

Act is administered by the Ministry for the Environment. Act establishes the Ministry for the Environment (including Minister) and the Parliamentary Commissioner for the Environment. Act establishes the functions and powers of the Ministry for the Environment (including Minister) and the Parliamentary Commissioner for the Environment.

Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010

The Act provides for the appointment of Commissioners as a temporary replacement for elected members of the Canterbury Regional Council (s 3(a)). The Act effectively provides for a reduction in the role of Environment Canterbury (ECan). The Act further provides the council with specific powers to “address issues relevant to the efficient, effective, and sustainable management of freshwater in the Canterbury region” (s 3(b)).

Environmental Protection Authority Act 2011

Act is administered by the Ministry for the Environment. Act establishes the Environmental Protection Authority (EPA) and establishes core functions and powers of the EPA. The Act also amends other environmental acts to make reference to the EPA and its role. Environmental Acts amended by the establishment of the EPA also include:-

- Imports and Exports (Restrictions) Act 1988
- Climate Change Response Act 2002
- Ozone Layer Protection Act 1996.

**Epidemic Preparedness Act 2006**

Act is administered by the Ministry of Health. The principal purpose of the Act is to “ensure that there is adequate statutory power for government agencies” to respond to epidemics (s 3(1)).

**Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012**

Act is to come into force on the dates appointed by the Governor-General with all provisions in force by the 1st of July 2014. The Act provides for New Zealand’s international obligations in managing the marine environment. The Environmental Protection Authority and Maori Advisory Committee have important roles under the Act.

**F**

**Fencing of Swimming Pools Act 1987**

Act is administered by the Department of Building and Housing. The Act promotes child safety by “requiring the fencing of certain swimming pools”.

**Fire Service Act 1975**

Act is administered by the Department of Internal Affairs. The Act’s purpose is to “establish the NZ fire service and to consolidate and amend the law relating to the protection of life and property from fire”.

**Fisheries Act 1996**

Act is administered primarily by the Ministry of Fisheries. The Act provides for “the utilisation of fisheries resources while ensuring sustainability” (s 8(1)).

**Food Act 1981**

Act is administered by the Ministry of Agriculture and Food. The Act aims to “consolidate and amend the law relating to the sale of food”. (This area of law is currently undergoing substantial review).

**Freedom Camping Act 2011**

Act is administered by the Department of Conversation and the Department of Internal Affairs. The Act regulates freedom camping on local authority and DoC land (s 3). The Act allows local authorities to make freedom camping bylaws (s 11) if the bylaws are “necessary” for several purposes, including protecting the area (s 2(a)(i)) and protecting the “health and safety of people who may visit the area” (s 2(a)(ii)).

**G**

**Gas Act 1992**

Act is administered by the Ministry of Economic Development. The Act provides for “regulation, supply and use of gas in New Zealand” (s 1A(a)), as well as aiming to protect the “health and safety of members of the public in connection with the supply and use of gas” (s 1A(c)).
Hazardous Substances and New Organisms Act 1996

Act is administered by the Ministry for the Environment. The Act is the main piece of legislation dealing with the management of hazardous substances and new organisms. The Act outlines core functions and powers of the Environmental Protection Authority (and to a lesser extent local government). The Act is an important piece of legislation in environmental health management as it reflects a more contemporary approach than the Health Act 1956 or Resource Management Act 1991.

Health Act 1956

Act is administered by the Ministry of Health. The Act establishes the Ministry of Health and its key functions and powers. Although it was passed in 1956 (and many aspects of health regulation have been incorporated into the New Zealand Public Health and Disability Act 2000) the Public Health Act 1956 is still considered the primary Act for environmental health in New Zealand.

Health and Disability Commissioner Act 1994

Act is administered by the Ministry of Health. The Act establishes the Health and Disability Commissioner (s 8) and promotes and protects the “rights of health consumers and disability services consumers” (s 6).

Health and Disability Services (Safety) Act 2001

Act is administered by the Ministry of Health. The Act promotes safe provision of health and disability services to the public (s 3).

Health and Safety in Employment Act 1992

Act is administered by the Department of Labour. The Act is New Zealand’s core legislation on health and safety in employment.

Health Practitioners Competence Assurance Act 2003

Act is administered by the Ministry of Health. The Act protects the health and safety of the public by ensuring that health practitioners are competent.

Health Research Council Act 1990

Act is administered by the Ministry of Health. The Act establishes the Health Research Council that advises the Minister on national health research policy (s 6(1)(a)), appoints various research committees and consults with Ministry of Health to establish health research priorities (s 6).

Housing Accords and Special Housing Areas Act 2013

Act is administered by the Ministry of Business, Innovation and Employment. The Act is at the periphery of environmental health as it aims to “enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts” (s 4). These districts are outlined in Schedule 1.

I

Imports and Exports (Restrictions) Act 1988

Act is administered by the Ministry of Economic Development.
This Act provides import and export restrictions.

L

**Land Transport Act 1998**

Act is administered by the Ministry of Transport. The Act promotes “safe road user behaviour and vehicle safety” and consolidates road safety and land transport enactments.

**Litter Act 1979**

Act is administered by the Department of Internal Affairs. The Act authorises public authorities to appoint litter control officers. The Act provides for the abatement and control of litter (aimed primarily at preventing littering in public places).

**Local Government Act 2002**

Act is administered by the Department of Internal Affairs. The Act outlines the core functions and powers of Local Government.

**Local Government (Auckland Council) Act 2009**

Act is administered by the Department of Internal Affairs. The Act establishes the Auckland Council and provides for the councils core functions, powers and duties (s 3).

M

**Medicines Act 1981**

Act is administered by the Ministry of Health. The Act consolidates the law regarding the “manufacture, sale and supply of medicines, medical devices and related products”.

**Mental Health Commission Act 1998**

Act is administered by the Ministry of Health. The Act establishes the Mental Health Commission.

**Mental Health (Compulsory Assessment and Treatment) Act 1992**

Act is administered by the Ministry of Health. The Act covers compulsory psychiatric assessment and treatment.

**Mines Rescue Trust Act 1992**

Act is administered by the Department of Labour. The Act establishes the Mines Rescue Trust.

N

**National Parks Act 1980**

Act is administered by the Department of Conservation. The Act consolidates the law on national parks.

**New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987**

Act is administered by the Ministry of Foreign Affairs and Trade.
The Act establishes New Zealand Nuclear Free Zones.

**New Zealand Public Health and Disability Act 2000**

Act is administered by the Ministry of Health.
This Act (together with the Health Act 1956) is the key public health legislation in New Zealand.

**Nuclear-Test-Ban Act 1999**

Act is administered by the Ministry of Foreign Affairs and Trade.
The Act implements the comprehensive Nuclear-Test-Ban Treaty into domestic law.

**O**

**Ozone Layer Protection Act 1996**

Act is administered by the Minister for the Environment.
The purpose of the Act states the Act is to “help protect human health and the environment from adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer” (s 4).

**P**

**Plumbers, Gasfitters and Drainlayers Act 2006**

Act is administered by the Department of Building and Housing.
The purpose of the Act is to regulate those in the industry to “protect the health and safety of members of the public” by ensuring competency (s 3).

**R**

**Radiation Protection Act 1965**

Act is administered by the Ministry of Justice.
The Act establishes the Radiation Protection Advisory Council (s 5). The Director-General grants licenses under the Act (s 16).
The Act looks at the control and manufacture of radioactive materials (s 12). Under s 12(2A) any conditions to a consent must be provided in writing to the EPA (if the radioactive material is also a hazardous substance under s 2 of the HASNO Act 1996).

**Residential Tenancies Act 1986**

Act is administered by the Department of Building and Housing.
Under s 45 of the Act the landlord has a responsibility to “comply with requirements in respect of buildings, health, and safety” under any enactment (s 45(1)(c)) and ensure access to bathroom facilities.
The landlord has similar obligations in regards to boarding houses under s 66I. In s 66K a tenant in a boarding house has the obligation to keep their room “reasonably clean and reasonably tidy, and in a condition that does not create a health and safety hazard” (s 66K(1)(c)).

**Resource Management Act 1991**

Act is administered by the Ministry for the Environment.
The Act is the core environmental legislation for New Zealand.
The Act establishes key functions and powers of the Ministry for the Environment and Local Government.
Sale and Supply of Alcohol Act 2012

Act is administered by the Ministry of Justice. The object of the Act is to regulate in a “reasonable” manner the sale and supply of alcohol to the public to reduce harm from alcohol consumption. The Act requires local government to create an alcohol outlet policy for their respective area.

Smoke Free Environments Act 1990

Act is administered by the Ministry of Health. The purpose of the Act is to reduce the “exposure of people who do not smoke themselves to any detrimental effect on their health caused by smoking by others” (s 3A(1)(a)). Aim is to create smokefree workplaces, schools and public places under s 4.

Trans-Tasman Mutual Recognition Act 1997

Act is administered by the Ministry of Economic Development. The Act provides for the “recognition in New Zealand of regulatory standards adopted in Australia regarding goods and occupations”.

Tuberculosis Act 1948

Act is administered by the Ministry of Health. The Act aims at providing treatment, care and preventing the spread of tuberculosis. The Act creates obligations for Medical Officers of Health.

Waste Minimisation Act 2008

The Act is the core legislation in regards to waste management in New Zealand (a key aspect of environmental health).

Wine Act 2003

Act is administered by the Ministry of Agriculture and Forestry. The Act provides for the “minimising and management of risks to human health arising from the making of wine and the ensurance of compliance with wine standards” (s 3(c)).
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