

10 February 2025

Environment Committee
Parliament Buildings
Wellington 6011

Dear Committee Members

ICNZ SUBMISSION ON THE RESOURCE MANAGEMENT (CONSENTING AND OTHER SYSTEM CHANGES) AMENDMENT BILL

Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (ICNZ) is the representative organisation for general insurance companies in New Zealand. Our members collectively write more than 95 percent of all general insurance in New Zealand and protect well over \$1 trillion of New Zealanders' assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, cyber insurance, commercial property, and directors and officers insurance).

ICNZ and its members are committed to supporting New Zealand in adapting to climate change and improving its resilience to natural hazard risks. To facilitate long-term enhancement of natural hazard resilience, insurers support greater consideration of these risks in land use decision making. When land use decisions allow for development or intensification in high-risk locations, New Zealanders are put in harm's way and the Crown, councils, and communities are exposed to unnecessary trauma, disruption, and economic costs for response and recovery from natural disaster events. Excessive natural hazard exposure reduces the financial security, productivity, and stability of New Zealand communities.

Insurers also play a critical role in the recovery from natural disasters and are therefore supportive of measures that allow greater efficiency and adaptability in the response to and recovery from natural disaster events.

GENERAL COMMENTS

Generally, we support the amendments proposed in the Bill. Insurers are concerned by the continued development of areas that present significant natural hazard risk. The proposed changes provide consenting authorities with options that could strengthen land use controls to help mitigate natural hazard risks. However, we note that, in some cases, reforms could equally be used to weaken controls relating to natural hazards. Until such time as planned Phase Three Resource Management Act reforms, in conjunction with a robust climate adaptation framework, introduce more consistent and complete controls around consideration of natural hazard risks in planning and land use decisions, we welcome the Resource Management (Consenting and Other System Changes) Amendment Bill as it could play a role in preventing new development in high-risk locations.

HOUSING AND NATURAL HAZARDS CLAUSES

Clauses 6 and 7

We acknowledge that clauses 6 and 7 may be introduced in relation to the National Policy Statement on Urban Development (NPS-UD) but will also be relevant to a National Direction on Natural Hazards (NDNH). We understand the aim of the NDNH is to create national consistency in the management of natural hazards, and Ministerial direction would ensure alignment with the national direction.

Clause 20

We are supportive of clause 20 as it could allow for councils to more easily improve earthquake-prone buildings that pose a significant risk to people and other buildings.

Clause 22

On balance, we are supportive of inclusion of natural hazards in the list of related provisions that may be amended by an Intensification Planning Instrument (IPI) as this creates another potential control on natural hazards. However, we note that this change could also be used to weaken natural hazard-related provisions, and this would be a poor outcome or potentially an unintended consequence.

Clause 25 and Clause 46

We support speedier implementation of rules relating to natural hazards; however, we note that this change could also apply to a rule that reduces consideration of natural hazards.

Clause 37

Insurers welcome the addition of section 106A and the clarification of a consent authority's ability to refuse land use consent due to natural hazard risks. This is a vital component of strengthening New Zealand's resilience to natural disasters and reducing the costs and disruption of future events. Without regulation, decisions around natural hazard risk could be left to landowners. These decisions often create implications, risks, and costs for third parties: the emergency response system, the Crown, councils (including buyouts, such as after the North Island weather events in 2023).

We note that the threshold of what presents a "significant" risk is not defined. We encourage the committee to consider a strict definition for inclusion in the Bill, for the Bill to refer to a specific, nationally consistent definition, to be set in regulations.

EMERGENCY RESPONSE CLAUSES

Clause 64

We are supportive of introducing resource management regulation-making powers to support emergency response and recovery efforts. Recovery from a natural disaster event is complex, and improving the adaptability of the systems involved can enable better and faster long-term recovery and enhance New Zealand's resilience to natural hazards.

We note the government's intention to progress emergency management reform this year. It is vital that this section is consistent with any future emergency management reform. We encourage the

committee to consider how this section will fit with other reforms in the emergency management system to ensure that proposed changes work together in a unified direction.

INSURANCE AGAINST FINES

Clause 66

Clause 66 of the Bill which will prohibit insurance against fines.

ICNZ has commented on similar provisions in the past. However, having consulted our members, we make the following observations to inform the Committee's consideration.

Statutory liability insurance is a standard liability policy purchased by businesses to manage their risks that provides protections for certain fines and defence costs. Generally, statutory liability insurance only covers unintentional breaches and does not cover intentional or wilful or reckless conduct.

Based on the Bill's Regulatory Impact Statement, we understand that the policy rationale behind clause 66 is to strengthen deterrence for environmental offending and to improve effectiveness of enforcement activity in resource management.

We question whether the prohibition against insurance for fines will achieve these aims. Statutory liability insurance generally already excludes cover for intentional behaviour meaning that businesses that deliberately set out to breach the Resource Management Act 1991 will not be covered the policy in any event. Those businesses that are protected by statutory liability insurance are not those that set out to breach their statutory obligations.

If the prohibition against insurance for fines is introduced, this will shift liability back to the insured and businesses will need to pay the fines for accidental or unintentional breaches from other sources. This may have a greater impact on smaller businesses which are likely to have fewer resources available to pay. The financial impact of fines on smaller businesses, including their ability to continue in business, should be taken into account.

Further, the prohibition may make the recoverability of fines more difficult.

If the prohibition proceeds, insurers will need to review and potentially revise their insurance policy wordings to ensure they do not contain any prohibited cover and make consequential amendments to marketing material and other documentation. Insurance premiums may also need to be adjusted. There will be compliance costs associated with these activities. Additional compliance costs have implications for insurance affordability.

The prohibition applies not only to the insurer but also to the policyholder and penalties for breach are potentially high (up to \$250,000). This makes it particularly important that sufficient time is allowed for careful implementation. If the prohibition is progressed, we would support the two-year commencement period set out in the Bill (clause 2(5)).

If the prohibition is progressed, we would also support clause 66(3) which allows insurance to continue to cover legal and remediation costs.

Thank you again for the opportunity to submit on the Resource Management (Consenting and Other System Changes) Amendment Bill. Should you have any questions about our submission, please contact sean@icnz.org.nz.

Yours sincerely



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