

Environmental Reporting Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Environmental Reporting Bill, and recommends by majority that it be passed with the amendments shown.

Introduction

The Environmental Reporting Bill would require regular reporting on New Zealand's environment. A report on one of five domains (air, freshwater, land, marine, atmosphere and climate) would be released every six months. It would report on the state of, and pressures on, the environment, as well as effects the changes in the environment might be having on other areas. A synthesis report analysing trends across all the domains would be published every three years, drawing on the best available data.

The legislation would make the Secretary for the Environment and the Government Statistician responsible for the production and publication of environmental reports.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Domain and Synthesis Reports

We recommend amending clauses 7 and 10 to replace “economic benefits” with “economy”, so that both positive and negative economic impacts from changes to the state of the environment were included in domain and synthesis reports. The majority of us believe this would bring balance regarding the economic benefits from natural resources, and would take into account environmental impacts on the economy. We also recommend adding subclauses 7(1)(c)(iiia) and 10(1)(c)(iiia) to include a te ao Māori impact category.

Commencement

The majority of us recommend removing the specific date for the release of the first synthesis report from clause 8. Instead, we recommend amending clause 11 to require that the first domain report be published within 18 months of the bill’s commencement, initiating the first three-year environmental reporting cycle. The first synthesis report would be due three years from the date of the first domain report’s release.

Responsibility for Environmental Reporting

Topics

Clause 18 sets out the proposed role of the Minister for the Environment and the Minister for Statistics in making regulations prescribing topics to be covered in environmental reports. We recommend amending subclause 18(3) to expand the number of entities to be consulted before recommending regulations. We propose adding the public, iwi authorities, and local authorities to the list.

We also recommend inserting subclauses 6(1A) and 9(2) which would require the Ministers to present reports jointly to the House of Representatives, thus encouraging political accountability. Concern by some over Government Ministers having regulation-making power over the subject matters is noted.

Government members of the committee believe that environmental monitoring comes at considerable expense, and it is not appropriate for independent officers effectively to be able to commit public expenditure. Furthermore, there is a check on any government misus-

ing these regulations in that a process of public consultation would be required on the regulations that ensured transparency in the process.

Role of the Parliamentary Commissioner for the Environment

Clause 17 sets out the Parliamentary Commissioner for the Environment's role in the environmental reporting process. We note that the commissioner could choose to report on an environmental report, but would not be obliged to. The Officers of Parliament Committee recommended an increase in the commissioner's funding to support this function.

We note suggestions that the commissioner's environmental reporting role should be expanded. However, the commentary function proposed in the bill would allow the commissioner to provide independent scrutiny of environmental reports, consistent with the commissioner's existing functions and powers under the Environment Act 1986.

Disclosure of information

We recommend that clause 16 be amended to clarify that the Government Statistician could withhold access only to untested and unpublished data prepared for the purposes of this Act. This clause is intended to maintain the independence and integrity of reports, and to ensure that no single party, including the Parliamentary Commissioner for the Environment or the Ministers, is privileged above another regarding access to raw data from an unpublished report. It would also ensure that data could be properly quality assured before its release; it is not intended to prevent public access to data, and is consistent with section 15 of the Statistics Act 1975.

We also recommend amending clause 16 to clarify that a request for untested information does not include requests made under the Ombudsmen Act 1975 or the Public Audit Act 2001. This provision acknowledges that the powers of the Ombudsmen and the Auditor-General to seek, obtain, and review the decisions and performance of departments would not be affected.

Treaty of Waitangi

We recommend inserting a new Treaty of Waitangi clause, 4A. This would be consistent with other legislation, would recognise the principles of the Treaty, and would acknowledge te ao Māori (the Māori world view) as an important contribution to New Zealand’s environmental reporting.

Purpose and Interpretation

We recommend amending clause 3 to simplify the purpose of the bill. We recommend a number of amendments to clause 4 for clarity, including amending the definitions of the “freshwater,” “marine” and “land” domains to take into account animals and man-made structures.

New Zealand Labour Party minority view

Labour does not support the Environmental Reporting Bill in its current form. Although we wholeheartedly support the purpose of the bill, to require regular reports on the state of the New Zealand environment, there are a number of fundamental issues that prevent us from voting for this legislation. Our primary and substantial reason for not being able to support the bill is the lack of legislated independence in the reporting process.

The Labour Party, despite our grave reservations, supported this legislation to select committee because we had a commitment to working constructively to ensure we had robust legislation that would provide truly independent environmental reporting. Regrettably, this aim has not been achieved, and we do not believe the bill in its current form will deliver on its purpose.

The bill requires that the Secretary for the Environment and the Government Statistician report on five environment domains—air, atmosphere and climate, freshwater, marine, and land. The bill further specifies that these domains must be divided into topics. There is not a list of topics contained in the bill, but instead there is a process for choosing the topics. This process is set out in clause 18(1), and states that regulations may be made, on the joint recommendation of the Minister for the Environment and the Minister of Statistics to the Governor-General, prescribing topics to be covered in domain and synthesis reports.

Labour members agree with the majority of submitters who did not support clause 18, and agree with their reasoning that having Ministers set topics is incompatible with independent environmental reporting, as it creates the opportunity for political interference. We share the view that this opportunity for political interference undermines the integrity and independence of environmental reporting. The choice of topics will ultimately determine the scope of the environmental reports produced under the legislation. If Ministers are given the responsibility for setting topics this creates the opportunity to exclude politically sensitive or controversial topics. This would obviously undermine the independence of the report.

We concur with the view expressed by Fish and Game New Zealand and the Parliamentary Commissioner for the Environment that as this clause is incompatible with independent reporting, it is therefore contrary to the purpose of the bill.

Several alternatives for topic selection that could achieve greater levels of neutrality were mooted to the select committee. One of these was to have the Parliamentary Commissioner for the Environment select the topics. While the Parliamentary Commissioner for the Environment has expressed her support for the assurance role set out in clause 17 of the bill, the Parliamentary Commissioner for the Environment herself expressed a view that having the dual functions (of topic setting in addition to assurance and comment) may potentially constrain her ability to provide assurance and comment as required by clause 17 of the bill.

Our preferred mechanism for topic setting is to have the Secretary for the Environment and the Government Statistician, after consultation with the Parliamentary Commissioner for the Environment, the public, iwi, and local authorities, undertake this task. In our opinion, this would allow for a greater separation between topic selection and the political sphere.

For too long New Zealand has lagged well behind international best practice in that we are the only country in the OECD without an ongoing commitment in law to independently and regularly monitor the state of our environment. The bill in its current form does not deliver on our desire to see that independent and regular monitoring of our environment.

Green Party of Aotearoa/New Zealand minority view

The Green Party supported the referral of the Environmental Reporting Bill to select committee because it is a step towards having regular reporting on the state of our environment guaranteed by law. New Zealand is out of step with the rest of the OECD in not having this.

If environmental reporting is to be credible and robust it needs to be independent. The Green Party opposes the bill because while it provides for reporting on the state of the environment, it does not provide for independent reporting. This is a major flaw at the heart of the bill. Our history has shown that governments can manipulate environmental data if it does not suit them.

The process for preparing state of the environment reports is not fully independent because clause 18 provides wide regulation making powers for the Minister for the Environment and Minister of Statistics. Those powers include prescribing the topics to be covered in the occasional domain reports to be published on a rotating basis every six months and the three-yearly synthesis reports; the pressures which are changing the state of the environment, and the impacts the changes are having.

As the Parliamentary Commissioner for the Environment said in her submission: “Giving the selection of topics to the Government of the day creates the opportunity for political interference. For instance, it would be possible to avoid reporting on an environmental topic that is important but also controversial...”

Officials noted that nearly half of submitters on the bill commented on clause 18 with the majority opposing it. Submitters considered that having Ministers set topics was incompatible with independent environmental reporting. The Green Party agrees.

Submitters suggested several options to avoid having topics being influenced or perceived to be influenced by political priorities and ideology. These included removing the topics from the legislation, having them set in a schedule to the bill itself, having the Parliamentary Commissioner for the Environment set the topics on her own or in consultation with the Government Statistician and the Secretary for the Environment, a panel of scientists with input from the Parliamentary Commissioner, or having the Secretary for the Environment and the Government Statistician set the topics jointly. None of the options have been supported by the majority of the select committee.

The bill as amended requires Ministers to consult the public, iwi authorities, local authorities and others before making the regulations, however, it still gives Ministers too much scope to interfere with and restrict the matters to be reported on and the types of information which will be relevant.

Green members support the other select committee amendments to the bill in response to public submissions such as the changes to clause 16. The Green Party was concerned that in the bill as introduced, clause 16 could have been used to restrict access to environmental data. These concerns were shared by 46 percent of submitters on the clause who believed its ambiguous drafting would reduce the independence, integrity, and transparency of environmental reporting by restricting access to information. Agencies, such as local authorities which collect information used in environmental reporting, could have been restricted in their right to publish this data.

Clause 16 also potentially interfered with the roles and responsibilities of the Officers of Parliament (the Parliamentary Commissioner for the Environment, the Ombudsman, and the Auditor-General) by constraining their statutory powers to require and obtain information to carry out their investigative functions. The amendments to clause 16 are intended to avoid this.

The Green Party remains concerned that clause 16 may still restrict the ability of local authorities, especially regional and unitary councils, to use information they collect about their region's environment and trends; and to fulfil their statutory functions for policy making, planning, and environmental management. Councils should be able to use their own information for their own reporting and other purposes and the bill should explicitly protect this right.

Appendix

Committee process

The Environmental Reporting Bill was referred to the Local Government and Environment Committee on 5 March 2014. The closing date for submissions was 17 April 2014. We received and considered 323 submissions from interested groups and individuals. We heard 22 oral submissions, and held hearings in Wellington and Auckland. We received advice from the Ministry for the Environment, Statistics New Zealand, and the Parliamentary Counsel Office.

Committee membership

Scott Simpson (Chairperson)

Matt Doocey

Paul Foster-Bell

Julie Anne Genter

Joanne Hayes

Tutehounuku Korako

Ron Mark

Todd Muller

Eugenie Sage

Su'a William Sio

Dr Megan Woods

Environmental Reporting Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

text deleted unanimously

Hon Amy Adams

Environmental Reporting Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Environmental Reporting Act **2014**.
- 2 Commencement**
This Act comes into force on the earlier of the following: 5
- (a) a date appointed by the Governor-General by Order in Council (and 1 or more orders may be made bringing different provisions into force on different dates):
 - (b) the day that is 9 months after the date on which this Act receives the Royal assent. 10

Part 1
Preliminary provisions

- 3 Purpose**
The purpose of this Act is to—
- (a) require regular reports on the state of New Zealand’s environment as a whole: 15
 - (b) require regular reports on the state of the air, atmosphere and climate, freshwater, land, and marine domains:
 - (c) ensure that producers of environmental reports act independently and produce fair and accurate reports: 20
 - (d) ensure that the expertise of government departments is utilised in producing environmental reports:
 - (e) affirm the role of the Parliamentary Commissioner for the Environment in reporting on environmental reports and the processes that produced the reports. 25

3 Purpose

The purpose of this Act is to require regular reports on New Zealand's environment.

4 Interpretation

In this Act, unless the context otherwise requires,— 5

air domain means the domain surrounding the earth that is composed of gases, vapours, and particulates

atmosphere and climate domain—

(a) means the domain that—

(i) extends from the surface of the earth to the outer layer of the stratosphere; and 10

(ii) is composed of gases, particulates, and meteorological conditions; and

(b) includes climate

biodiversity means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems 15

climate means meteorological conditions and their variations, including solar radiation, temperature, humidity, clouds, precipitation, atmospheric pressure, and wind 20

Commissioner means the Parliamentary Commissioner for the Environment appointed under the Environment Act 1986

domain report means a report of a kind required to be produced by **section 9** 25

ecological integrity means the full potential of indigenous biotic and abiotic features and natural processes, functioning in sustainable communities, habitats, and landscapes

ecosystem means a system of organisms interacting with their physical environment and with each other 30

environmental report means a synthesis report or a domain report

freshwater domain—

(a) means the domain composed of water in all its physical forms; ~~but~~ and 35

(ab) includes the animals, vegetation, and structures associated with the freshwater domain; and

- (b) does not include atmospheric water or water forming that forms part of the marine domain

Government Statistician means the Government Statistician appointed under the State Sector Act 1988

land domain means the domain composed of land cover and soil, and includes minerals and associated elements 5

impact category means the matters that may be impacted upon by the state of the environment or changes to the state of the environment, as listed in **sections 7(1)(c) and 10(1)(c)**

land domain— 10

(a) means the domain composed of soil and underlying rock; and

(b) includes the animals, vegetation, and structures associated with the land domain

marine domain— 15

(a) means the domain bounded on the landward side by the mean high-water mark, and on the seaward side by the outer limits of New Zealand's exclusive economic zone and continental shelf; and

(b) includes estuaries, the sea, the seabed, subsoil, and the air space aboveand the soil of the area described in **paragraph (a)**; and 20

(c) includes items of cultural and historic heritage within the animals, vegetation, and structures associated with the marine domain 25

Minister for the Environment means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of the Environment Act 1986

Minister of Statistics means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of the Statistics Act 1975 30

Ministers means the Minister for the Environment and the Minister of Statistics

Ministry means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Environment Act 1986 35

pressure means a natural or human-induced circumstance, factor, element, activity, or process

public health has the meaning given in section 6(1) of the New Zealand Public Health and Disability Act 2000

Secretary means the chief executive of the Ministry 5

Statistics New Zealand means the department of State established under that name by the Statistics Act 1975

structure has the meaning given in section 2(1) of the Resource Management Act 1991

synthesis report means a report of a kind required to be produced by **section 6** 10

te ao Māori means Māori world view

topic means a topic prescribed for a synthesis report or a domain report in regulations made under **section 18**.

4A **Treaty of Waitangi/Te Tiriti o Waitangi** 15

In order to recognise and respect the Crown's responsibility to take appropriate account of the Treaty of Waitangi/Te Tiriti o Waitangi,—

(a) **sections 7(1)(c) and 10(1)(c)** provide for te ao Māori to be an impact category in preparing synthesis and domain reports, to ensure that those reports, and the topics, are informed by a Māori perspective; and 20

(b) **section 18(3)** requires consultation with iwi authorities before regulations may be made, to ensure that the Ministers are informed of the views of those organisations before regulations are made. 25

5 **Act binds the Crown**

This Act binds the Crown.

Part 2 Environmental reporting

Synthesis reports

6 Synthesis reports

- (1) The Secretary and the Government Statistician must jointly produce and publish reports on New Zealand's environment as a whole. 5
- (1A) As soon as is reasonably practicable after the Secretary and the Government Statistician have published a synthesis report, the Ministers must jointly present the report to the House of Representatives. 10
- (2) In **subsection (1)**, **New Zealand's environment as a whole** includes the domains referred to in **section 9**.

7 Content of synthesis reports

- (1) Each synthesis report must describe, in relation to the topics for the time being prescribed in regulations made under **section 18**, all of the following matters: 15
- (a) the state of New Zealand's environment as a whole: including biodiversity and ecosystems; and
 - (b) the pressures that may be causing, or have the potential to cause, changes to the state of New Zealand's environment as a whole; and 20
 - (c) the impacts that the state of the environment and changes to the state of the environment may be having on the following: each of the following impact categories: 25
 - (i) ecological integrity; and
 - (ii) public health; and
 - (iii) economic benefits derived from utilising natural resources: 30
 - (iii) the economy; and
 - (iiia) te ao Māori; and
 - (iv) culture and recreation.
- (2) In addition to the matters set out in **subsection (1)**, each synthesis report must describe— 35
- (a) changes to the state of New Zealand's environment as a whole over time, including, if information in the report

is able to be compared with that in a previous synthesis report, changes to the state of the environment since that previous report was published:

- (b) how the state of New Zealand's environment as a whole measures against national or international standards. 5
- (3) The Secretary and the Government Statistician are not required to include in synthesis reports information that cannot be obtained by using reasonable efforts.

8 Frequency of synthesis reports

- (1) A synthesis report must be published once every 3 years. 10
- (2) The first synthesis report must be published by ~~30 June 2015~~ not later than 3 years after the date on which the first domain report is published under this Act.

Domain reports

9 Domain reports

- (1) The Secretary and the Government Statistician must jointly produce and publish reports on the following:
 - (a) the air domain:
 - (b) the atmosphere and climate domain:
 - (c) the freshwater domain: 20
 - (d) the land domain:
 - (e) the marine domain.
- (2) As soon as is reasonably practicable after the Secretary and the Government Statistician have published a domain report, the Ministers must jointly present the report to the House of Representatives. 25

10 Content of domain reports

- (1) Each domain report must describe, in relation to the topics for ~~the time being~~ prescribed in regulations made under **section 18**, all of the following matters: 30
 - (a) the state of the domain the report relates to, including biodiversity and ecosystems dependent on that domain; and
 - (b) the pressures that may be causing, or have the potential to cause, changes to the state of the domain; and 35

- (c) the impacts that the state of the environment and changes to the state of the environment may be having on ~~the following:~~ each of the following impact categories:
- (i) ecological integrity; and 5
 - (ii) public health; and
 - (iii) ~~economic benefits derived from utilising natural resources;~~
 - (iii) the economy; and
 - (iiia) te ao Māori; and 10
 - (iv) culture and recreation.
- (2) In addition to the matters set out in **subsection (1)**, each domain report must describe—
- (a) changes to the state of the domain over time, including, if information in the report is able to be compared with that in a previous domain report, changes to the state of the domain since that previous report was published: 15
 - (b) how the state of the domain measures against national or international standards.
- (3) The Secretary and the Government Statistician are not required to include in domain reports information that cannot be obtained by using reasonable efforts. 20

11 Frequency of domain reports

- (1) The first domain report for one of the domains listed in **section 9** must be published ~~within 6 months after the publication of the first synthesis report~~ not later than 18 months after this Act comes into force. 25
- (2) A domain report for one of the domains listed in **section 9** must be published at least once every 6 months, unless, within the next 6 months after the most recent domain report is published, a synthesis report is due to be published. 30
- (3) If, by virtue of **subsection (2)**, a domain report is not published because of the publication of a synthesis report, the domain report must be published within the next 6 months after the synthesis report is published. 35
- (4) Each of the domains listed in **section 9** must be reported on at least once every 3 years.

*Production of environmental reports***12 Overview of process for producing environmental reports**

The process for producing an environmental report involves the following steps:

- (a) the topics to be reported on are prescribed by regulations made under **section 18**, after the Minister for the Environment and the Minister of Statistics Ministers are satisfied that the topics meet the requirements of **section 18(2)** that provision; and 5
- (b) the statistics to measure those topics are selected in accordance with **section 13(2)**; and 10
- (c) the procedures and methods to be used in providing those statistics in an environmental report are selected decided in accordance with **section 13(4)**.

13 Roles of Secretary and Government Statistician 15

- (1) In producing and publishing an environmental report, the Secretary and the Government Statistician must utilise the expertise of the Ministry and Statistics New Zealand.
- (2) Before producing an environmental report, the Government Statistician must, after consulting the Secretary, decide what statistics will be used to measure topics prescribed by regulations made under **section 18**. 20
- (3) In deciding under **subsection (2)** what statistics will be used to measure topics, the Government Statistician must—
 - (a) follow what he or she believes to be best practice principles and protocols; and 25
 - (b) be satisfied that the statistics accurately represent the topic they purport to measure.
- (4) The Government Statistician has the sole responsibility for deciding the procedures and methods ~~that~~ are to be used in providing statistics that will be included in an environmental report. 30

14 Duty to act independently

In producing and publishing an environmental report, the Secretary and the Government Statistician must act independently of any Minister of the Crown. 35

15 Reports to be fair and accurate

The Secretary and the Government Statistician must, in so far as it is reasonably practicable, ensure that all environmental reports published give a fair and accurate representation of the state of New Zealand's environment as a whole, or the state of the domain being reported on. 5

16 Disclosure of information

(1) If any person involved in producing or publishing environmental reports receives a request for disclosure of information or analysis that will be, or has been, used in an environmental report to be published, that person must refer the request to the Secretary and the Government Statistician. 10

(2) The Secretary and the Government Statistician may, in response to a request referred to them under **subsection (1)**, order that the information or analysis not be disclosed if they are of the opinion that— 15

(a) disclosure of the information or analysis would compromise the independence of the report; or

(b) the information or analysis is integral to significant findings or conclusions of the report. 20

(3) Information or analysis must not be disclosed without the consent of both the Secretary and the Government Statistician.

(4) This section applies despite any other enactment.

16 Protecting integrity of untested information

(1) This section applies only to untested information. 25

(2) All requests for untested information must be transferred to the Government Statistician.

(3) The Government Statistician may, in response to a request for untested information, at his or her sole discretion withhold any untested information. 30

(4) In this section,—

request for untested information does not include requests made under the Ombudsmen Act 1975 or the Public Audit Act 2001

untested information—

- (a) means data, statistics, or findings prepared for reporting under this Act and not already in the public domain; but
- (b) does not include those data, statistics, or findings once the report for which they were prepared is published. 5

Role of Parliamentary Commissioner for the Environment

17 Role of Commissioner

- (1) In accordance with his or her functions and powers under the Environment Act 1986, the Commissioner may, at his or her discretion, report on an environmental report and the processes that produced it. 10
- (2) The matters that the Commissioner may report on under **subsection (1)** include, but are not limited to,—
- (a) analysing environmental reports: 15
- (b) identifying trends:
- (c) discussing the implications of environmental report findings:
- (d) recommending responses to environmental report findings. 20

Regulations

18 Regulations

- (1) The Governor-General may, on the joint recommendation of the **Minister for the Environment and the Minister of Statistics Ministers**, by Order in Council, make regulations prescribing— 25
- (a) topics to be covered in synthesis reports relating to—
- (i) the state of New Zealand's environment as a whole:
- (ii) the pressures that may be causing, or have the potential to cause, changes to the state of New Zealand's environment as a whole: 30
- (iii) the impacts that the state of the environment and changes to the state of the environment may be having on the matters set out in **section 7(1)(c)**: 35
- (b) topics to be covered in domain reports relating to—

- (i) the state of ~~the~~ a domain:
- (ii) the pressures that may be causing, or have the potential to cause, changes to the state of ~~the~~ a domain:
- (iii) the impacts that the state of ~~the~~ a domain and changes to the state of the domain may be having on the matters set out in **section 10(1)(c)**. 5
- (2) Before recommending the making of regulations under **subsection (1)**, the Minister for the Environment and the Minister of Statistics ~~Ministers~~ must be satisfied that any— 10
- (a) pressure topic or impact topic affects significant areas, resources, or numbers of people:
- (b) topic can be measured with robust statistical methods:
- (c) pressure topic is closely related to any state topic that it is asserted to affect: 15
- (d) impact topic is closely related to any state topic that is asserted to give rise to that impact.
- (3) Before recommending the making of regulations under **subsection (1)**, the Minister for the Environment and the Minister of Statistics ~~Ministers~~ must consult ~~the Government Statistician and the Commissioner~~:— 20
- (a) the Government Statistician; and
- (b) the Commissioner; and
- (c) the public; and
- (d) iwi authorities; and 25
- (e) local authorities.
- (4) In this section,—
- impact topic** means a topic of a kind referred to in **subsection (1)(a)(iii) or (1)(b)(iii)**:
- pressure topic** means a topic of a kind referred to in **subsection (1)(a)(ii) or (1)(b)(ii)**: 30
- state topic** means a topic of a kind referred to in **subsection (1)(a)(i) or (1)(b)(i)**.
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Legislative history

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