



Parliamentary Commissioner for the Environment

Te Kaitiaki Taiao a Te Whare Pāremata

Address by the Parliamentary Commissioner for the Environment, Simon Upton

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E ngā iwi o te motu, e ngā hau e whā, he mihi nui tēnei ki a koutou.

I have just finished reading Greg Severinsen's latest report on environmental advocacy.¹ It's a classic Environmental Defence Society (EDS) piece: comprehensive, intellectually rigorous and, as we have come to expect from EDS, long. 198 pages long. Hands up those who have read all of it. In fairness it is shorter than some other EDS reports!

Now I'm not poking fun at long reports. I write long reports. Members of Parliament have told me they are long. I have started producing 'summaries for parliamentarians' to lighten the load. I wouldn't expect everyone to read every word I write. But like Greg, I write at length because the issues I deal with are complex and because it is too easy to slide over the hard bits. Whether or not it amounts to advocacy, I consider that anything I write must be able to leave people with a better understanding of difficult issues than they had before they started reading. And to do that responsibly means being accurate and being comprehensive. I have a tiny but superb team who share those values.

The reason accuracy matters, is that I am seeking to influence people who make decisions. In that sense I certainly am an advocate. And I would not be doing a good job if I encouraged people to take decisions that were based on fallacies or supported only by tenuous information. Where information is lacking, being able to communicate uncertainty in a way that assists decision making is just as important as being able to communicate what is known with reasonable certainty.

Greg's paper contains a valuable discussion of what an advocate is. He concludes that, in the context of New Zealand's environmental management system, advocates of different types provide checks and balances. The check that I provide is the check that an accurate statement of the facts should exert on decision makers. How could someone make a decision which flies in the face of the evidence? Well quite easily, actually. One need go no further than Upton Sinclair's famous dictum that "it is difficult to get a man to understand something, when his salary depends on his not understanding it". We live in a world of interests and values. And we entrust decision making power to politicians motivated by values and interests. Evidence alone will not save us. And there is no assembly of angels to whom we can appeal.

¹ Severinsen, G., 2023. Environmental advocacy in the future resource management system. Auckland: Environmental Defence Society. <https://eds.org.nz/wp-content/uploads/2022/11/3.-Environmental-Advocacy-full-report.pdf>.

Maybe this is why EDS is so fond of the law as a check and balance. EDS has demonstrated time and again how important the law is in calling decision makers to heel. As long as I can recall, EDS has managed to mobilise some of the sharpest legal minds to ensure that the environmental interest is not quietly interpreted away by lawyers in the pay of those with deep pockets. In a world in which environmental resources are increasingly scarce and their values increasingly high, what is at stake can be worth a great deal. Without legal advocates like EDS on the warpath, much could be sacrificed. Decisions like King Salmon stand as monuments to the heavy artillery of the law. In comparison, what can my attempts to get the facts straight do to protect the environment?

Well, you have to pass laws that protect the environment in the first place. And people have to be persuaded to enact them. You can hear Greg's irritation with this messy world in the section of his report where he talks about making the law as clear as possible to remove unnecessary points of advocacy: "some things," he says, "should no longer be up for debate: the environment is a *parameter* for development, not a *stakeholder* to be heard."² Hear, hear I say to that sentiment although 'parameter' seems a rather limp term. I prefer the word 'foundational' or, as I have argued in my advocacy on the proposed resource management reforms, the environment is prior to our plans for it and they are fundamentally dependent on it.

I must note, parenthetically, the next sentence from Greg's paper where he suggests that the law, should play "more of a watchdog role ... rather than an outcome-shaping" one. While I agree that environmental advocates should be able to rely on clear law to ensure compliance with environmental limits, I continue to be surprised that EDS has been so relaxed about a resource management law reform proposal that puts outcome-shaping at its very heart. As drafted it will enable almost open-ended legal arguments to be mounted on why this outcome or that outcome is consistent with the aims of the legislation. I have proposed that the Natural and Built Environment Bill's purpose should, very simply, be "to protect the health of the natural environment and its capacity to sustain life" and that everything else should be subject to that. There's your prior parameter, clear and unambiguous!

That said, I am sceptical that more and more law is a complete solution. It relies on getting enough people to put the 'right' words on the statute book – and then defending them from people who have a different view about what the 'right' words should be. That, in a democracy, is a never-concluded debate. We may be able to declare that some things are no longer up for debate, but they are few and far between. The core of the criminal code qualifies. Some civil and political rights have achieved that status. Greg's report bravely speculates that monetary policy may have attained the inner sanctum.

But wherever the gates of heaven lie, I fear that, beyond high-level green aspirations, the environment's cause remains for the moment outside. Hence my continuing interest in providing a check and balance through scrutinising not just the laws Parliament enacts, but the environmental consequences of government policies and the perfectly legal activities undertaken by individuals and entities, governmental or private, under those policies.

² Severinsen, G., 2023, p.142–143.

At the bottom of all this is information. Environmental information. What's actually happening in the physical world. As I hope this audience will be aware, I have issued three major reports (long ones!) on the state of our environmental reporting, our environmental research, and the way in which that information and a range of analytical tools are used to put together our annual budgets. My one-line verdicts under these headings are as follows:

- We have an opportunistic environmental reporting system that relies on fragmented and patchy environmental monitoring that cannot provide a reliable picture of the state of our environment.
- The funding of public good environmental research is largely detached from the endless environmental strategies and roadmaps governments invent and from the output of environmental monitoring and reporting systems.
- We have a budget process that consistently fails to raise and address the long-term environmental challenges that we face.

I would make something of an exception for climate change. Here we do have good information and research capacity – in no small part because we signed international treaties that required us to gather information and account for our performance. The only reason we could pass ambitious climate legislation is that we had the data, the metrics and the policy tools to make implementing it possible. But that isn't the case for the rest of the environment portfolio.

Without foundational investments in environmental monitoring and research, we are often forced to make decisions on the basis of very tenuous evidence. It's simply not possible to come up with good policies – or try to implement good laws – if you don't know what's going on out there or you can't interpret the information that you do have. If I was writing a BIM (a briefing to an incoming minister), I'd have these items at the top of my list. "You can't do your job well, minister" I'd say, "if you haven't got the evidence you need to justify your policies or know whether they're working".

But hold on, I hear you say, what about Upton Sinclair's dictum? What if the minister doesn't want to know? After all, there are still people who hope they can get by on the basis of 'what you don't know can't hurt you'. That's where advocates come in – including myself. It's also where parliamentary accountability should come in. Isn't that what Parliament's all about? Even if the minister is derelict, there'll be someone asking hard questions won't there?

In reviewing the findings of the three reports I mentioned, I came to the conclusion that if there was going to be effective parliamentary accountability, I needed to help parliamentarians gain access to information in a form that enables them to do their job. In a nutshell, I concluded that parliamentarians needed clarity and transparency about:

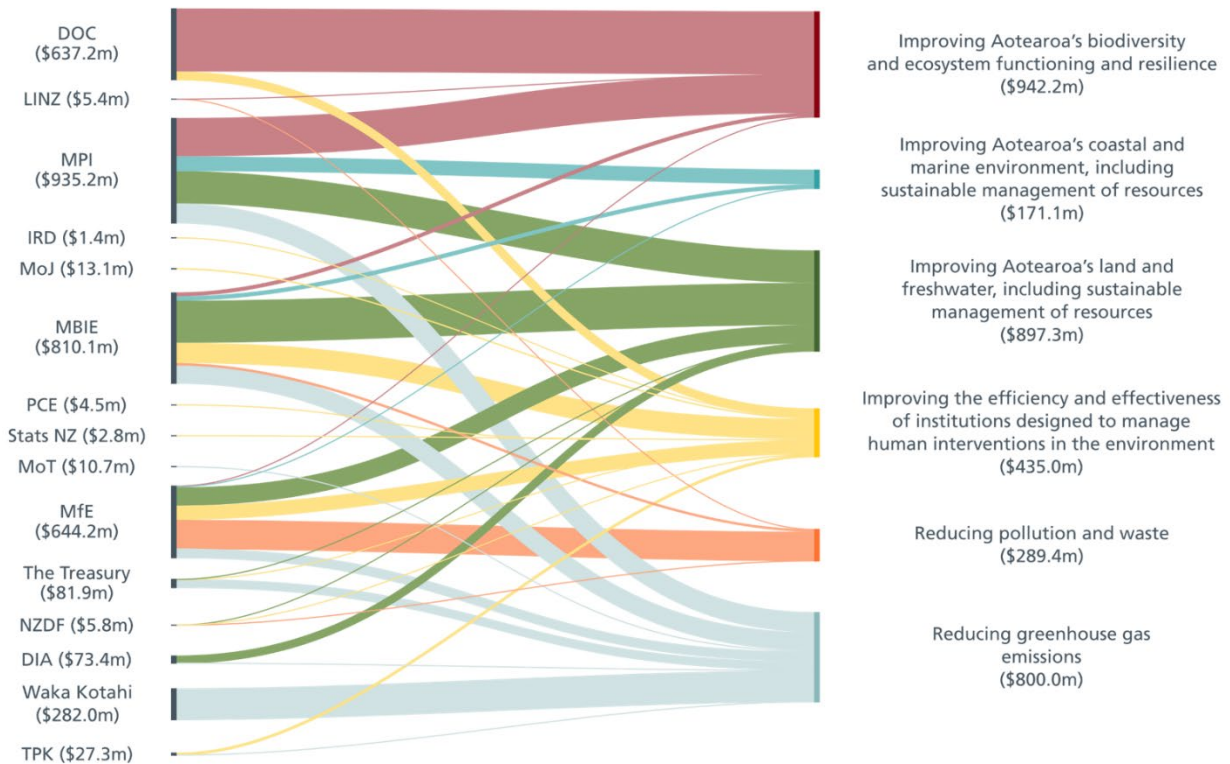
- why the Government is prioritising certain environmental issues (and not other ones)
- what environmental outcomes the Government is aiming for
- what the Government plans to do to achieve them, and how much it spends as part of that response.

The annual budget process is the principal accountability mechanism open to all parliamentarians. Asking questions about what gets prioritised, how the money is spent and whether it's making a difference goes to the heart not just of parliamentary accountability but environmental advocacy. If you can't interrogate public policy and public expenditure, you can't advocate for much. Unfortunately, public spending is currently set up to manage fiscal risks, not environmental ones. Now don't get me wrong. Fiscal risks are important. Those risks are managed at the level of appropriations made to departments and government agencies. But knowing that money got spent doesn't tell you anything about how it contributes to better environmental outcomes. So, in addition, we need to be able to scrutinise public expenditure in a way that maps onto the environmental outcomes we're all after.

When I say "we're all after", I think the big broad environmental goals we have are largely uncontroversial. So I am going one further than Greg when he says "some things should no longer be up for debate". I'm saying some things are no longer up for debate – at least aspirationally. Here they are:

- Improving Aotearoa's biodiversity and ecosystem functioning and resilience.
- Improving Aotearoa's coastal and marine environment, including sustainable management of resources.
- Improving Aotearoa's land and freshwater, including sustainable management of resources.
- Improving the efficiency and effectiveness of institutions designed to manage human interventions in the environment.
- Reducing pollution and waste.
- Reducing greenhouse gas emissions.

Here you have five high level outcomes that are easily extracted from the environmental reporting the Ministry for the Environment undertakes, plus one which represents the administration of 'the system' that supports them. I defy you to find anyone running for office who says that they want to degrade our land and water or increase our pollution and waste. So all is sweetness and light is it? Well, that depends on what you're doing about it. The way we currently account for public expenditure makes it hard to match expenditure with those outcomes. I've just done it for the first time. Here are the results:



Let's see which agencies are voted money to advance them. Here's the Department of Conservation's contribution – unsurprisingly mostly to the biodiversity outcome. Next here's the Ministry for Primary Industries. Lots of fingers in lots of pies. Next comes Ministry of Business, Innovation and Employment – another octopus contribution. Next comes the Ministry for the Environment. Followed by Waka Kotahi (lot's of climate relevant investment there). And finally, the also-rans – Land Information New Zealand, Ministry of Transport, Department of Internal Affairs – all the bolded ones on the left.

Now to save you adding all that up, it comes to around \$3.5 billion. It's not vast in the scheme of public spending but it's material. Is it enough? I don't know. Neither does anyone else – because we lack a solid measure of the environmental liabilities we continue to accumulate. It's useful to know that the total being expended on defending our biodiversity in the current financial year is around \$940 million. But it is not very meaningful. What we need to know is: what are the short to medium term outcomes the Government has and how does it plan to achieve them?

And that's what I'm calling for. If everyone agrees that these big broad outcomes are beyond debate, then governments should be explicit about how they're going to advance them. They can't do everything. They have to make choices – about which environmental issues they will prioritise and which policies they will invest in to advance their priorities. Many of those choices will be hard but they need to be able to be examined. And we need to know something about the difference that that environmental spending is making.

Again, our lack of good quality environmental information rears its head. Parliamentarians can't do their jobs without this information. Neither can you or I. We all need to be able to relate public action to the results of environmental monitoring and the insights of research. I am trying to persuade the Minister of Finance to facilitate reporting along the lines that I have outlined. Ideally it would involve an amendment to the Public Finance Act 1989. But I'm not planning to wait for that. I will produce annual analyses in the meantime to help the select committee ask better questions.

As some of you know, last year I published a review of the way we manage weeds that threaten native ecosystems. I won't summarise my report now, but it was not very complimentary. One of the biggest weed management expenditures currently being undertaken is to remove wilding conifers. Since 2016 over \$100 million has been spent on wilding conifer control. In a rare case of national level leadership, a national wilding conifer control programme was put together by the Ministry for Primary Industries that had wide support from farming, tourism and conservation interests who all had different reasons to want taxpayers to help control the problem. A total of \$100 million was secured as part of Budget 2020 to be spent over four years.

However, it was forecast that over \$200 million more would be required out to 2031 to control 95% of known infestations. Separate recent modelling has estimated that at least \$400 million will be needed to remove all known wilding conifer infestations if action is taken now and costs are not deferred into the future. Any delays will see costs increase. However, I have recently learned that the funding will fall from \$25 million this year (2022/23) to just \$10 million from July onwards. This will place at risk the gains that have been made in newly controlled areas and end any hopes of achieving containment on the scale envisaged back in 2020. It is my understanding that at least \$25 million per annum is required simply to maintain the gains made so far.

There are so many questions that could be usefully asked: Why spend so much on conifers, when there are scores of newly naturalised garden escapees some of which will themselves claim telephone number budgets a generation from now? Why start if there's no commitment to seeing the campaign through? How much investment to date is at risk of being wasted if there's no follow up? How well have decisions been based on monitoring and research findings?

These are all things select committees should be able to drill down into. As with any issue, select committees need to be asking: has the government chosen to focus on the most important priorities, is the level of its investment up to the task, what are we getting for that investment, and what are the future fiscal consequences of failure? In other words, have we just kicked the can down the road and with what irreversible consequences?

Of course, it's one thing to be able to ask the right questions. It's entirely another to want to know the answers. Here we run up against some of the shortcomings of our constitutional arrangements. Are select committees incentivised to conduct deep and searching enquiries? The executive is well supported by its officials to take good decisions if it wishes to. Our courts are similarly well-equipped to do what is asked of them. But what of the legislature? Can select committees in a single-chamber Westminster parliament really hold the executive to account?

I make no comment on the diligence or interest of MPs. I was one and I am certain I could have done a better job. But the workload is heavy, time is limited and select committees are not where most MPs want to be. They want to be in the executive – after the next reshuffle (if they're in the governing caucus) or after an election (if they're in the opposition caucus). Our system creates a serious motivational conflict for backbench MPs. What happens when a governing majority decides it wants to upend environmental protections and has the numbers to do so? Government MPs are in the House to support the executive of which they aspire to be a part. They cannot be guaranteed to walk the road to Calvary as Mike Minogue and Marilyn Waring did during the crises of the Muldoon era.

MMP has provided some checks and balances that did not exist then. But there are new distractions. As a backbench MP ruefully remarked to me the other day, when your list placing is potentially being judged on your social media profile, painstaking detail and the long view are not rewarded. People like Greg and me need to be constantly aware of that. Greg can write long reports that propose ingenious legal and institutional innovations. I can write long reports trying to put the facts in front of our elected representatives. But if the incentives to act are lacking, not much will change – unless there's a crisis.

Sadly, we've recently had our share. It is not as though we were not warned. Trends on so many indicators where we have at least some data suggest that things will get worse before they get better. By reviewing as fairly and objectively as I can the adequacy of our current arrangements, I try to help parliamentarians understand the dimensions of the issues they are being asked to grapple with. Much more could be done to assist them. But they have to be convinced of the need to act. They need to be explicit about their choices and the trade-offs they make. They need high quality information to inform those trade-offs. And then they have to be brave enough to find out whether their choices and investments are making a difference. They have to be prepared to take to heart Lord Keynes' famous riposte: "When my information changes, I alter my conclusions. What do you do, sir?"

I have not been a member of a political party for 22 years. I have excised my partisan reflexes. But I have not forgotten what a demanding task MPs are asked to fulfil. It is very easy to be critical of MPs and councillors. Too easy. They are people who have had the courage of their convictions to get off the couch and take a stand, to put themselves on trial for the choices they make and the ones they don't. If we are genuinely democrats, we should all respect their commitment even if we disagree fervently with their ideas.

They in turn need to internalise a fundamental democratic truth: that decision makers in our sort of democracy are not granted unlimited powers. When it comes to the environment, there is much that can and should be prescribed by law since none of us put the environment there and we need rules to govern the claims we make on it – for our own sakes, for those of future generations but also for te taiao itself, of which we are a part. But laws can't prescribe everything. Much has to be left to the discretion of decision makers on the facts of the particular case. Those discretions have to be informed by high quality information. And transparency requires that the use – or the failure to use – that information is on the record.

Some of you may have noticed that I recently offered some thoughts on the need for an energy strategy and the importance of ensuring that the choices that are made about some very large investments in decarbonisation options are subjected to an even level of scrutiny. Contrary to what some media observers concluded, I was not issuing a rallying cry for pumped hydro storage at Lake Onslow. I was asking that this option, along with all the others, be subject to transparent analysis and a transparent decision-making process. And that if claims are going to be made about one option being better than another, we need to know that the same parameters have been applied to all the options: the same discount rates, the same environmental impacts and so on.

In passing, let me say that in my view no one at the moment possesses sufficient information to make definitive claims. There is more we need to know, and key assumptions that need to be made publicly available. Electricity generation is a highly regulated affair. There is no 'free' market. It is saturated with public policy and the environmental – and economic – stakes are high. It is a classic case where law can't provide all the answers. There are trade-offs. Choices have to be made and they will be debated. Those who make them need the very best information. So do those who question them.

If my office can help to inform decision makers about the broad environmental outcomes we all share, I believe I will have done as much as I can. By bringing us all together for this conference and by pursuing its legal advocacy, EDS will have done what it can. But it will be our elected office holders who have to make many of the decisions that really matter.