

**Submission on the
Environmental Reporting Bill
to the
Local Government and Environment Committee**

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Te Kaitiaki Taiao a Te Whare Pāremata

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Introduction

The introduction of an Environmental Reporting Bill is a welcome development.

In New Zealand, there have been only two national State of the Environment reports, one in 1997 and one in 2007, both prepared by the Ministry for the Environment. The latter was strongly criticised for a lack of independence. Ever since then there have been calls from various quarters for the Parliamentary Commissioner for the Environment to be given the job of environmental reporting.

This Bill proposes that the Commissioner would independently review reports prepared by the Secretary for the Environment and the Government Statistician, and comment on the quality of data, the robustness of the analysis and other relevant matters. This differs from the earlier proposal for the Commissioner to prepare five-yearly reports on the state of the environment.

Because I have been anticipating a role in environmental reporting for most of my tenure, my staff and I have given a great deal of thought to the subject. In 2010 I released a report titled *"How clean is New Zealand? Measuring and reporting on the state of our environment"*.

The main finding of my report was that creating and maintaining public trust in environmental reporting requires three attributes - independence, accountability, and technical capability.

Reports on the state of the environment will be more trusted if they are prepared *independently*. Clear lines of *accountability* are best set in legislation. And the organisations accountable for the work must have the *capability* to do it.

As the current Commissioner, I am comfortable with the proposed commentary role. It provides for a level of independent scrutiny and is consistent with my existing functions under the Environment Act. In the Bill, the description of the Commissioner's role in clause 17 is appropriate.¹

There are, however, a number of major problems with particular clauses in the Bill. Some of these clauses undermine the independence and accountability of the reporting system being created.

My submission therefore proposes:

Clause 3	Clarify and simplify the purpose
Clause 13	Improve the criteria for selecting indicators
Clause 16	Prevent the undermining of accountability
Clause 18	Protect independence

I wish to speak to this submission.

Clause 3 - Clarify and simplify the purpose

The purpose of an Act is critically important.

The purpose proposed in this Bill has five parts (a - e). Some are problematic and others are not purposes:

(a) "require regular reports on the state of New Zealand's environment as a whole"

The phrase "*as a whole*" is unnecessary and subject to different interpretations.² It occurs elsewhere in the Bill, and should be deleted wherever it occurs to avoid ambiguity.

(b) "require regular reports on the state of the air, atmosphere and climate, freshwater, land and marine domains"

This is unnecessary. It is a description of what is to be done, not the purpose in doing it. The requirement to produce domain reports is covered in Clause 9.

(c) "ensure that producers of environmental reports act independently and produce fair and accurate reports"

'Fair' to whom? And as discussed later in this submission, 'accuracy' is desirable but other things matter as well.

(d) "ensure that the expertise of government departments is utilised in producing environmental reports"

This is not the purpose of environmental reporting.

(e) "affirm the role of the Parliamentary Commissioner ..."

Again, this is not a purpose, and the role of the Commissioner is described in Clause 17. What the purpose does not do is emphasise the central importance of independence.

I recommend that:

Clause 3 be amended to read:

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

Clause 13 - Improve the criteria for selecting indicators

Clause 13 describes how statistics (indicators) will be chosen for reporting on the various topics. Indicators would be chosen by the Government Statistician after consulting the Secretary for the Environment.

Choosing the best possible set of indicators is very important, but not easy.

Statistics NZ uses 12 'good practice' criteria for selecting indicators.³ Three of these are particularly appropriate for choosing indicators for environmental reporting.

1. Indicators must be relevant and meaningful – relevant to the topic they purport to measure, and meaningful for the purpose of diagnosing the health of our environment.
2. Indicators must be statistically sound and fit for purpose. No indicator is perfect, but all need to be robust and accurate enough to serve the purpose above.⁴
3. Indicators often must relate to other indicators to provide a 'weight of evidence' that sheds meaningful light on environmental topics.

Clause 13(3) prescribes two criteria for the Government Statistician to use in selecting indicators for environmental reporting.

The first, *"follow what he or she believes to be best practice principles and protocols"*, is so general as to be meaningless.

The second, *"be satisfied that the statistics accurately represent the topic they purport to measure"*, could bias the choice of indicators towards accuracy and representativeness at the expense of environmental relevance and meaningfulness.⁵

Clause 13(3) should instead set out the three criteria above.

I recommend that:

Clause 13(3) be replaced with:

"In deciding under subsection (2) what statistics will be used to measure topics, the Government Statistician must be satisfied that the statistics—

- (a) are relevant and meaningful for the purpose of reporting on the state of New Zealand's environment;*
- (b) are statistically sound and fit for this purpose; and*
- (c) will relate to other indicators, where appropriate, to provide a weight of evidence.*

Clause 16 - Prevent the undermining of accountability

Clause 16 gives the Secretary, and the Government Statistician the power to withhold *“information or analysis that will be, or has been, used in an environmental report to be published...”*.

The stated intention of this clause is to ensure environmental reports are not influenced by the Government.⁶ Cabinet papers note that *“Ministers will not see information on the data or analysis before reports are published and will not be able to influence the content of those reports.”*⁷

However, Clause 16 goes far beyond protecting against Government interference.

First, the clause, as drafted, is ambiguous about when information can be withheld. Does it mean that material could be withheld *after* the report is published, or only *before* reports are published? The stated intention is clear, and the drafting is easily remedied to remove the ambiguity. However, other issues with this clause are much more serious.

The clause gives a very broad description of the type of material that can be withheld. It is generally reasonable to withhold drafts of a report, datasets created specifically for it and analysis of these datasets – until the report is published. Clause 16, however, refers broadly to *“information and analysis”*, rather than specifically to drafts of environmental reports, datasets and analysis. It could therefore be used to restrict public access to source data or information required for other purposes.⁸

Moreover, there are already established processes under the Official Information Act and the Statistics Act to protect draft documents and official statistics prior to their publication so the clause is not needed at all.⁹

Alarmingly, this clause goes even further than restricting public access to information. It would fetter the special power of the Officers of Parliament to obtain information in performing their statutory duties, and is thus in direct conflict with legislation fundamental for holding decision-makers to account.^{10,11} Changes to the powers and functions of Officers of Parliament should only be done with the support of all parties in Parliament.

The stated intention of Clause 16 is to prevent Ministerial interference with state of the environment reports. However, Ministers are kept at arms-length from the production of the report through Clause 14 which states:

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

This could be reinforced by adding the intent of Clause 16 to Clause 14, namely:

"Ministers will not see information on the data or analysis before reports are published and will not be able to influence the content of those reports."

I recommend that:

Clause 16 be deleted.

Clause 18 - Protect independence

The Bill requires the Secretary for the Environment and the Government Statistician to report on five environmental domains - air, atmosphere and climate, freshwater, marine, and land. In turn, the Bill specifies that these domains must be divided into topics. The Bill does not list the topics, but instead sets out the process for choosing them.

The process, as set out in Clause 18 (1), is that topics are defined in regulations that would follow the enactment of the Bill. The regulations would be recommended jointly by the Minister for the Environment and the Minister of Statistics to the Cabinet, and finally become law when the Governor General signs an Order in Council.

This means that topics would not be chosen independently. 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.

Clause 18 is in direct conflict with the principle of independence expressed in Clause 3 (Purpose) and Clause 14 (Duty to act independently).

There are two ways in which this can be remedied.

The first way is to list proposed topics in a schedule to the Bill and make it available for public submissions. A list of proposed topics has already been prepared by officials.¹²

The second way is for the Government Statistician and Secretary for the Environment to choose the topics independently of the Government (after public consultation). This would be simpler.

Both could be designed so that new topics could be added and others deleted as understanding of the environment changes.

I recommend that:

Clause 18 be deleted

and

the Government Statistician and the Ministry for the Environment release the list of proposed topics for public consultation.

Notes

- 1 The Minister for the Environment consulted me on this clause during the drafting of the Bill.
- 2 The phrase 'New Zealand's environment as a whole' could be interpreted to mean the sum of the five domains, or the sum of all regions, or to require the averaging of data at a national level.
- 3 The three proposed here are the first, the fourth and the sixth. Statistics NZ, Good Practice Guidelines for the Development and Reporting of Indicators, July 2009, pp16-17.
- 4 It is acceptable for an indicator to be less than perfect, as long as it is relevant and meaningful. On the other hand, it is pointless to use indicators that are not relevant or meaningful even if they have high statistical robustness. Caveats on the accuracy of the indicators can be put into the report.
- 5 The Ministry for the Environment has already selected six criteria. However, these do not adequately cover the three core criteria proposed in this submission. See <https://www.mfe.govt.nz/environmental-reporting/about-environmental-reporting/national-environmental-indicators/environmental-indicator-criteria/index.html>
- 6 *"[Clause 16] will ensure that a core component of the Bill is achieved, that environmental reporting will be independent from the Government of the day". Departmental Disclosure Statement, Environmental Reporting Bill.* http://disclosure.legislation.govt.nz/bill/government/2014/189/#h_4
- 7 *Environmental Reporting Bill: Approval for Introduction*, Office of the Minister for the Environment, April 2014. <http://www.mfe.govt.nz/cabinet-papers/topics/environmental-reporting-bill-introduction-cabinet-paper.pdf>
- 8 Note that clause 16 (2) limits the power to withhold material to situations where the Secretary and Government Statistician consider disclosure would *"compromise the independence of the report"*, or where it is *"integral to significant findings or conclusions of the report"*. However, these criteria are very broad and therefore do not adequately restrain the use of the clause.
- 9 Official Information Act 1982, s18, Statistics Act, 1975, ss 37-37F. One of the supporting documents of the Bill states that the proposed approach for disclosure is to be consistent with the approach used for Tier 1 statistics. *Departmental Disclosure Statement, Environmental Reporting Bill.* (http://disclosure.legislation.govt.nz/bill/government/2014/189/#h_4) The release of Tier 1 statistics is covered by Statistics New Zealand protocols. Protocol 5 states that Tier 1 statistical releases are made available to all at the same time, so that no one is advantaged by a privileged release. (*Protocol 5, Principles and Protocols for Producers of Tier 1 Statistics*, Statistics New Zealand. p.52, 2007). This is aimed in particular at key economic statistics that can be used for financial gain. It is hard to imagine how environmental statistics could be used for financial gain.

- 10 The Auditor General, the Ombudsmen, and the Parliamentary Commissioner for the Environment have strong powers to obtain information in order to independently carry out their statutory duties to hold public agencies to account. Public Audit Act 2001, s21, Ombudsmen Act 1975, s18, Environment Act 1986, s19.
- 11 During the drafting of the Bill, I was consulted on only one clause, namely the description of the role of the Parliamentary Commissioner's role in Clause 17. In a meeting with the Minister for the Environment on 30 September, she asked if I wished to see drafts of environmental reports. I replied that I would not, (before publication) because any commentary I would make would be on the final publicly released reports. Unfortunately, this seems to have been misinterpreted as my agreement to the disclosure clause which I did not see until shortly before the Bill was introduced. Letter from James Palmer, Deputy Secretary – Sector Strategy, Ministry for the Environment, dated 4 February 2014.
- 12 Tables 2 through 6 in Ministry for the Environment and Statistics New Zealand, A Framework for Environmental Reporting in New Zealand – DRAFT, 9 January 2014, pp-16-20.