



**Resource Management Law Association
of New Zealand Inc.**

ENVIRONMENTAL REPORTING BILL

TO: Local Government and Environment Committee

**Submission on behalf of the
Resource Management Law Association of New Zealand Inc**

Introduction

1. This Submission on the Environmental Reporting Bill (**Bill**) is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).
2. The RMLA is concerned to promote within New Zealand:
 - a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework;
 - b. Excellence in resource management policy and practice; and
 - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and

councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there is inevitably a divergent range of interests and views of members.

4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the Bill. It should also be noted that a number of members may be providing their own individual submissions and those submissions may represent quite different approaches to the views expressed here.
5. For these reasons, this submission does not seek to advance any particular policy position in relation to the Bill, but rather is kept at a reasonably high level and is made with a view to ensure that the Bill:
 - a. is consistent with the general framework of existing laws and policies of relevance, including the Resource Management Act 1991 (“**RMA**”);
 - b. is practicable and workable; and
 - c. will assist in promoting best practice.

SUBMISSION

National environmental reporting

6. Specific matter – General comment
7. Submission – The purpose of the Bill is to create a national-level environmental reporting system to ensure that reporting on the environment occurs on a regular basis and is independent, fair and accurate. This general purpose of the Bill is supported.
8. The Bill has been informed by recent research on the state of environmental information, including the Ministry for the Environment *Measuring Up: Environmental Reporting – A*

Discussion Document 2010, the stocktake of national environmental statistics by Statistics NZ, the Ministry for the Environment and the Department of Conservation in 2012, and the Environment Domain Plan 2013. The Environment Domain Plan identified that there is a significant need for more environmental information in order to answer the enduring questions about the state of the environment, and common themes were identified in order to address this around governance, common reporting frameworks, centralised or federated data storing, and baseline information.

9. The Bill itself does not include any requirement to improve or standardise environmental information collection, or to generate information that is not currently collected. It is considered that the Bill, or perhaps, separate complimentary measures, could helpfully address the consistency of environmental monitoring, and in particular could enable regulations to improve regional data collection by local authorities that can be compared on a national basis.
10. Similarly, the stated Government objective is to have a legislative basis for independent environmental reporting to give the public certainty about the scope and quality of the information they will release. In terms of this, it is suggested that consideration be given to also including in the Bill a requirement that the domain reports indicate any areas where there are information gaps or concern over the quality of the data, in order to assist public understanding of the information available.
11. The explanatory note of the Bill also states that the reports will give New Zealanders the information they need to understand the condition of their environment, why it is like that, and what it means. The RMLA considers that it is important that the Bill generates clear and transparent information, and that the reports have a public education focus. However, it is not clear that the report prepared by the Secretary and Government Statistician will provide this public information role, while it is at the discretion of the Commissioner to provide its own report. In practice, the Commissioner is likely to release its own report providing the relevant information to the public in an accessible form. If this is likely to be the case, then it could be reflected in the legislation to ensure that the public information objective of the Bill is met.

12. Recommendation – The Bill is supported subject to the amendments recommended in this submission.

Purpose – clause 3

13. Specific matter – Purpose of the Bill, clauses 3(d) and (e)
14. Submission – Subclauses (d) and (e) address process matters rather than the purpose of the Bill. Subclause (d) is covered in clause 13(1) which provides that in producing and publishing an environmental report the Secretary and Government Statistician must utilise the expertise of the Ministry and Statistics New Zealand. Subclause (e) is covered in clause 17.
15. Recommendation – Delete subclauses (d) and (e) of clause 3.

Interpretation – clause 4

16. Specific matter – New definition: ‘ecological integrity’
17. Submission – No definition is provided for ‘ecological integrity’, while we observe that the explanatory note uses the term ‘ecosystem integrity’. It would assist the application of the legislation if the term used in clauses 7(1)(c)(i) and 10(1)(c)(i) was defined.
18. Recommendation – Include a definition of ‘ecological integrity’ (or ‘ecosystem integrity’, if that is the term intended to be used in clauses 7(1)(c)(i) and 10(1)(c)(i)) in clause 4.
19. Specific matter – New definition: ‘national standards’
20. Submission - The Bill provides that the synthesis and domain reports must describe how the state of the environment as a whole or the domain measures against national or international standards (clauses 7(2)(b) and 10(2)(b)). This is supported as it is important

that the reports compare findings to any relevant national standards, (which we suggest may include any applicable National Environmental Standards (NES), any relevant National Policy Statements (NPS) expressing standards and regulations). If this was the intention, it would assist the clarity of obligations under these clauses to have a definition of 'national standards' in the Bill which includes NES, NPS and regulations promulgated under the Resource Management Act 1991 (RMA).

21. Recommendation – Include a definition for 'national standards' which includes NES, any relevant NPS expressing standards, and regulations promulgated under the RMA (if that is the policy intention).

Contents of synthesis and domain reports – clauses 7 and 10

22. Specific matter – Contents of the reports, clauses 7(1)(c) and 10(1)(c)
23. Submission – Clauses 7(1)(c) and 10(1)(c) list matters to be addressed in the reports as being impacted by changes in the state of the environment. This reads as providing an exhaustive list, however we consider that it would be appropriate to preserve flexibility to address any impact arising from the state of the environment or changes to the state of the environment in addition to the matters listed which the report must describe.
24. Recommendation – Amend clauses 7(1)(c) and 10(1)(c) to state “the impacts that the state of the environment and changes to the state of the environment may be having on matters including, but not limited to, the following: ...”.
25. Specific matter – Contents of the reports, new clause to address limitations and gaps in information.
26. Submission – As noted above, we consider that the reports (or at least the synthesis reports) could helpfully also identify any limitations or gaps in the scientific data and statistical information that was used to compile the report. It is suggested that this would be helpful in two respects, being:

- a. to assist decision making on further guidance for data collection and monitoring required; and
 - b. to assist the public in understanding the scope and quality of the information that has informed the report and enhance the fairness and accuracy of the reports.
27. Recommendation – Provide a new sub-clause in clauses 7 and 10 to provide that the reports shall identify any limitations in the scientific or statistical information (including lack of information, and inconsistency in methods of data collection or recording) reviewed for the report.

Domain categories and definitions

28. Specific matter – Domain categories and definitions
29. Submission – There is inevitably some overlap between the domain categories. However, the ‘air’ and the ‘atmosphere and climate’ domains could be amended to provide better clarification on their scope. The Environment Domain Plan provided for ‘atmosphere’ with a focus on air quality and discharges, and ‘climate change’ to address greenhouse gas emissions and climatic conditions (so that climate and atmosphere/air would be separate). We consider that the domains of ‘air’ and ‘atmosphere and climate’ (and their definitions) would be clearer if they addressed ‘atmosphere’ and ‘climate change’ consistent with the Environment Domain Plan.
30. It is also not clear on the definitions of air, or climate and atmosphere whether it is intended that these domains are confined to the domain within New Zealand (in particular "climate" may be seen as global, but it may not have been intended that the domain reports in this area have a global focus).

31. Recommendation – Provide further clarity on the matters to be addressed in the domains of ‘air’ and ‘atmosphere and climate’ by amendment to the domain names and their definitions.

Roles of Secretary and Government Statistician

32. Specific matter – Statistics to use, clause 13(2) and (3)
33. Submission – Clause 13(2) and (3) provides that the Government Statistician, in deciding what statistics will be used to measure topics, after consultation with the Secretary, must follow what he or she believes to be best practice principles and protocols and be satisfied that the statistics accurately represent the topic they purport to measure. It is not clear that the Government Statistician will have the expertise to know best practice principles and protocols on the range of technical matters that are to be addressed in the reports without independent expert advice. There should be provision for the Government Statistician to seek independent expert advice if required before confirming what statistics are to be used.
34. Recommendation – Amend clause 13 to enable the Government Statistician to seek independent expert advice if required before confirming the statistics to use. For example, clause 13(3) could be worded as follows: "In deciding under subsection (2) what statistics will be used to measure topics, the Government Statistician **may seek independent advice if he or she considers this necessary, and** must- ...".
35. Specific matters – Statistics and comparison with national and international standards, clause 13(3)
36. Submission – In deciding what statistics should be used there should also be a requirement that the chosen statistics will enable a comparison of the results with applicable national or international standards.

37. Recommendation – Amend clause 13(3) to add a new subclause (c) to provide that the Government Statistician must “consider whether the statistics will enable a comparison of the results with applicable national or international standards”.

Disclosure of information

38. Specific matter – Disclosure of information, clause 16
39. Submission – Clause 16 provides that the Secretary and Government Statistician may order that information or analysis not be disclosed if they are "of the opinion that either "disclosure of the information or analysis would compromise the independence of the report", or "the information or analysis is integral to significant findings or conclusions of the report".
40. Clause 16 relates to information or analysis that "will be, or has been, used in an environmental report to be published”, but it is unclear whether the intent is to only authorise the withholding of information until after the report is published. In order to ensure transparency of the reports, it would generally be appropriate for the information or analysis to be disclosed once the relevant report has been published.
41. If the intention was for clause 16 to also apply to information or analysis used in a report that has already been published, then we would recommend that further consideration be given to the reasons for withholding information and whether the requirement should be for the Secretary and Government statistician to "be satisfied" that disclosure should not occur. (In particular, there should be no concern about compromising the independence of a report that has already been published, and there is unlikely to be reason for information or analysis that is integral to a finding or conclusion to be withheld unless for example the analyses involved proprietary software or modelling).
42. Recommendation – Amend clause 16 to make it clear that this clause applies only prior to the public release of the report, or otherwise reconsider the reasons for withholding information (if it were intended that clause 16 applies after the release of a report).

Role of Parliamentary Commissioner for the Environment

43. Specific matter – Discretion to provide report
44. Submission – The Commissioner has discretion on whether or not to report on an environmental report released by the Secretary and Government Statistician. As addressed above, the public information aspect of reporting on the environment is important and should be enhanced by this legislation. It is not clear that the report by the Secretary and Government Statistician will (of itself) satisfy the public information objective. To achieve this, the reports by the Commissioner could be made mandatory (which is more likely to reflect what will happen in practice in any event), or alternatively the legislation could place a positive obligation on the Parliamentary Commissioner to consider whether he or she should report on any environmental report released.
45. Recommendation – Amend clause 17 to provide that the Commissioner is consider whether he or she should report on each environmental report released.

Other matters

46. Specific matter – Statistical data and information
47. Submission –The Bill does not provide a list of sources for the environmental statistics that the Government Statistician will use in preparing a report. It is noted that the statistical information reviewed for the purpose of the stocktake of the official data in the Environment Domain Plan was limited to official statistics produced within NZ's Official Statistics System, statistics produced by Crown Research Institutes, and the data used to compile these statistics. It would assist the transparency of the legislation and the preparation of the reports to provide a list of the sources of statistical data and information available to the Government Statistician. As this list may change over time it could be provided by regulation or as a non-exhaustive list.

48. Recommendation – Provide that the Governor-General may, on the joint recommendation of the Minister for the Environment and the Minister of Statistics make regulations listing the sources of environmental monitoring data and statistics available to the Secretary and Government Statistician for the reports.

Wish to be heard

49. The RMLA wishes to be heard in support of this submission.



Signature of Martin Williams, President
on behalf of the Resource Management Law Association

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