

In Confidence

Office of the Minister for the Environment

Chair

Cabinet Legislation Committee

Environmental Reporting Bill: Approval for Introduction

Proposal

1. I propose that the Cabinet Legislation Committee approve the attached Environmental Reporting Bill for introduction to the House of Representatives (the House).
2. The Bill reflects Cabinet decisions on environmental reporting made in August and October 2013. I have also incorporated consequential policy that is additional to, but consistent with, Cabinet's original intent.

Policy

3. On 5 August 2013, Cabinet agreed to issue drafting instructions for an Environmental Reporting Bill [CAB Min (13) 26/6 refers], setting out:
 - roles and responsibilities for reporting
 - scope of reporting
 - timing of reporting
4. Cabinet determined that the Minister for the Environment and the Minister of Statistics will have joint power to recommend regulations be promulgated setting out the topics to be reported. Within that framework, the Secretary for the Environment and the Government Statistician would determine statistics for reporting against the topics. The Secretary for the Environment and the Government Statistician will then be jointly required to produce regular reports at arm's length from Government, with the Parliamentary Commissioner for the Environment (PCE) providing independent commentary at his or her discretion.
5. Cabinet agreed that the scope of environmental reporting would cover the state of the environment across a number of domains, changes in the state over time, and pressures driving changes in state. On 29 October Cabinet expanded this scope to include reporting on the impacts that the state of the environment, and changes in the state, have on the significant uses and benefits New Zealanders derive from the environment in the areas of: ecosystem integrity; public health; economic benefits and resource utilisation; and culture and recreation [CAB Min (13) 37/6 refers]. Cabinet also noted that legislation will require statistics reported to be substantively representative of the topic they aim to cover.
6. Cabinet agreed that reporting would follow a three-yearly cycle, with a domain report (for one of five domains – air, atmosphere and climate, land, freshwater and marine)

being published every six months and a synthesis report summarising trends across all environmental domains published once every three years. The first synthesis report was agreed to be produced in 2015, within 6 months of a new government being elected.

Consequential policy matters

7. On 5 August Cabinet agreed that the Minister for the Environment and the Minister for Statistics may authorise other minor and technical matters to be included in the legislation that are not inconsistent with Cabinet's decisions and further develop the appropriate roles and functions of the Ministry for the Environment and Statistics New Zealand [CAB Min (13) 26/6 refers].
8. Two policy issues arose during drafting which I have incorporated into the Bill under the power delegated to me by Cabinet and are set out below.

Disclosure of information

9. A core component of the package agreed by Cabinet is that environmental reporting will be independent from the Government of the day. To this end it was noted that Ministers will not see information on the data and analysis before reports are published and will not be able to influence the content of those reports.
10. Under the Environment Act 1986, the PCE has a wide-ranging ability to request information from government agencies. In discussion with the PCE we have agreed it would not be appropriate for the PCE to receive these reports before Ministers. I have therefore included an additional provision in the Bill that ensures domain and synthesis reports, including findings and conclusions, are not disclosed to any person before the date on which they are published.
11. The inclusion of this provision will not hamper evidence-based policy advice to Ministers. The provision allows for discretionary release by the Secretary for the Environment and Government Statistician should a request from any person be received, for example a request for information from Ministers where that information is required to progress policy work.

Independence of the Government Statistician

12. The high standards of expertise, integrity and independence that are associated with the role of the Government Statistician under the Statistics Act 1975 form the backbone of the arm's length environmental reporting system agreed by Cabinet and set out in the Bill.

13.

s. 9(2)(h)

14. In order to make clear the role of the Government Statistician under the Environmental Reporting Bill I have inserted three provisions into the Bill:

- Before recommending regulations are made, joint Ministers must consult with the Government Statistician, and also with the Parliamentary Commissioner for the Environment.
- The Government Statistician, following consultation with the Secretary for the Environment, will have final responsibility for determining statistics used to measure topics to be reported in environmental reports under the Bill.
- The Government Statistician will have the sole responsibility for deciding the procedures and methods to be used in providing any statistics that will be included in any environmental report.

Regulatory impact analysis

15. The Regulatory Impact Analysis requirements do not apply to this proposal, as it will have no or only minor impacts on businesses, individuals or not-for-profit entities.

Compliance

16. The Bill is consistent with each of the following:

- principles of the Treaty of Waitangi
- rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (state the nature of any potential inconsistencies identified, or state that there are none; note the steps taken to address any issues, or include information on any justifications for the bill infringing a right or freedom)
- disclosure statement requirements – a disclosure statement has been prepared by the Ministry for the Environment and is attached to this paper for Ministers' information
- principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations
- LAC Guidelines: Guidelines on Process and Content of Legislation.

Consultation

17. The Ministry for the Environment carried out public consultation on the intent to introduce an Environmental Reporting Bill in 2011.
18. Consultation with Statistics NZ has been ongoing throughout the development of this Bill. The PCE has also provided comments on how her role is to be reflected.
19. Inter-departmental consultation was previously undertaken on the policy underpinning this Bill. Further consultation on the draft Bill has taken place with the Ministry of Justice, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri, the Treasury, Department of Conservation, Department of Prime Minister and Cabinet, Office of Treaty Settlement, LINZ, the Ministry of Foreign Affairs and Trade and the Department of Internal Affairs.
20. Their comments have been taken into account in the final analysis of the proposals included in this paper.

Binding on the Crown

21. The Bill will bind the Crown [CAB Min (13) 26/6 refers].

Creating new agencies or amending law relating to existing agencies

22. This Bill will not create new agencies and will not amend the law relating to existing agencies.

Associated regulations

23. Regulations will be needed to set out the topics to be reported on under each environmental domain. The regulations will be made on the joint advice of the Minister for the Environment and the Minister of Statistics in consultation with the Government Statistician and the Parliamentary Commissioner for the Environment

24. I expect regulations will be developed in 2014 and in place by mid-2015.

Other instruments

25. The Bill does not include any provision empowering the making of deemed regulations.

Definition of Minister/department

26. The Bill defines the Parliamentary Commissioner for the Environment, Government Statistician and Statistics New Zealand with reference to the Act that establishes these roles. Minister for the Environment and Ministry for the Environment are defined as the Minister of the Crown and department who, for the time being are responsible for the administration of the Environment Act 1986. Secretary means the chief executive of the Ministry. Minister of Statistics is defined as the Minister of the Crown, who for the time being is responsible for the administration of the Statistics Act 1975.

Commencement of legislation

27. The Bill provides for a commencement date that is the earlier of either, nine months after the Act receives Royal assent or on a date appointed by Order in Council. This enable Regulations to be developed that set out the topics to be covered by domain and synthesis reports, before the requirement to produce these reports commences.

28. It is intended regulations will be developed in 2014 and in place by mid-2015. The timeframes for commencement provide for bringing the Bill into force at the same time as the regulations, but does not leave commencement open-ended.

29. I can confirm that the explanatory note to the Bill sets out the reasons for the commencement provision.

Parliamentary Stages

30. The attached Environmental Reporting Bill has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

31. s. 9(2)(f)(iv)

32.

Publicity

33. The introduction of the Environmental Reporting Bill represents a milestone in delivering on our commitment to legislate for regular independent environmental reporting. I will announce the introduction of the Bill with an appropriate press release. I expect there to be widespread support for this Bill to create a credible and independent regime for environmental reporting.

34. I intend to proactively release this paper along with the previous two Cabinet papers which sought policy decisions on the elements of the Bill. Any information that is not appropriate for release will be withheld where consistent with the Official Information Act.

Recommendations

The Minister for the Environment recommends that the Committee:

Previous decisions

1. **note** that on 5 August 2013 Cabinet agreed to issue drafting instructions for an Environmental Reporting Bill mandating regular, robust and independent national-level environmental reporting for New Zealand [CAB Min (13) 26/6 refers];
2. **note** that on 29 October 2013 Cabinet agreed further detail around the scope of environmental reporting [CAB Min (13) 37/6 refers];

Consequential policy matters

3. **note** that Cabinet has agreed the Minister for the Environment and the Minister for Statistics may authorise other minor and technical matters to be included in the legislation that are not inconsistent with Cabinet's decisions [CAB Min (13) 26/6 refers];
4. **note** that Cabinet has agreed the Minister for the Environment and the Minister for Statistics may further develop the appropriate roles and functions of the Ministry for the Environment and Statistics New Zealand [CAB Min (13) 26/6 refers];
5. **note** that I have included the following additional provisions in the Bill, consistent with my delegated authority:

- 5.1. a requirement that domain and synthesis reports, including findings and conclusions, are not disclosed to any person before the date on which they are published;
- 5.2. a requirement that Ministers consult with the Government Statistician and the Parliamentary Commissioner for the Environment when making regulations specifying the topics for environmental reporting;
- 5.3. a provision that the Government Statistician, following consultation with the Secretary for the Environment, will have final responsibility for determining statistics used to measure topics to be reported in environmental reports under the Bill;
- 5.4. a provision that the Government Statistician will have the sole responsibility for deciding the procedures and methods to be used in providing any statistics that will be included in any environmental report;

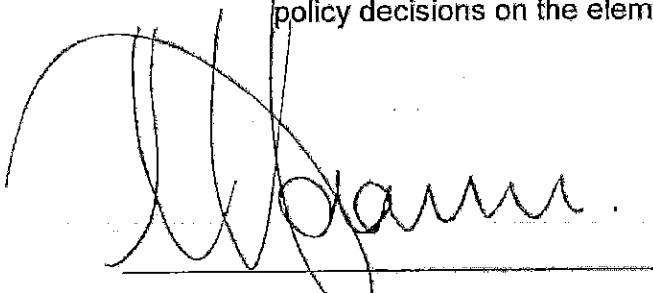
Commencement

6. agree that the Environmental Reporting Bill will come into force the earlier of either, on a date appointed by Order in Council or on the day that is nine months after the date on which the Bill receives Royal assent to allow time for regulations to be developed that set out the topics to be covered by domain and synthesis reports before the requirement to produce these reports commences;

S. 9(2)(F)(iv)

Publicity

11. note that, due to significant interest in this Bill, I intend to proactively release this Cabinet paper along with the previous two Cabinet papers which sought policy decisions on the elements of the Bill.



Hon Amy Adams
Minister for the Environment

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Cabinet Legislation Committee

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Minute of Decision

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Environmental Reporting Bill: Approval for Introduction

Portfolio: Environment

On 12 February 2014, the Cabinet Legislation Committee:

Previous decisions

- 1 **noted** that in August 2013, Cabinet agreed to issue drafting instructions for an Environmental Reporting Bill mandating regular, robust and independent national-level environmental reporting for New Zealand [CAB Min (13) 26/6];
- 2 **noted** that in October 2013, Cabinet agreed further detail around the scope of environmental reporting [CAB Min (13) 37/6];

Consequential policy matters

- 3 **noted** that in August 2013, Cabinet agreed that the Minister for the Environment and the Minister for Statistics may:
 - 3.1 authorise other minor and technical matters to be included in the legislation that are not inconsistent with Cabinet's decisions;
 - 3.2 further develop the appropriate roles and functions of the Ministry for the Environment and Statistics New Zealand;[CAB Min (13) 26/6]
- 4 **noted** that the Minister for the Environment has included the following additional provisions in the Bill, consistent with the authority referred to in paragraph 3 above:
 - 4.1 a requirement that domain and synthesis reports, including findings and conclusions, are not disclosed to any person before the date on which they are published;
 - 4.2 a requirement that Ministers consult with the Government Statistician and the Parliamentary Commissioner for the Environment when making regulations specifying the topics for environmental reporting;

- 4.3 a provision that the Government Statistician, following consultation with the Secretary for the Environment, will have final responsibility for determining statistics used to measure topics to be reported in environmental reports under the Bill;
- 4.4 a provision that the Government Statistician will have the sole responsibility for deciding the procedures and methods to be used in providing any statistics that will be included in any environmental report;

Commencement

- 5 **agreed** that the Environmental Reporting Bill come into force the earlier of either;
- 5.1 on a date appointed by Order in Council; or
- 5.2 on the day that is nine months after the date on which the Bill receives Royal assent to allow time for regulations to be developed that set out the topics to be covered by domain and synthesis reports before the requirement to produce these reports commences;

S. 9(2)(f)(iv)

Publicity

- 10 **noted** that, due to significant interest in the Bill, the Minister intends to proactively release the paper under LEG (14) 2 paper along with the previous two Cabinet papers which sought policy decisions on the elements of the Bill.