



**Local Councils
play an active
role in keeping
our communities
healthy.**

Environmental Reporting Bill

Local Government New Zealand's submission to Local Government and Environment Committee

17 April 2014

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by **Lawrence Yule**, President, Local Government New Zealand and **Fran Wilde**, Chair, Regional Sector Group of Local Government New Zealand.

We would like to discuss with the Local Government and Environment Committee the matters raised in this submission.

Introduction

Thank you for this opportunity to submit on the Environmental Reporting Bill. This submission has been prepared on behalf of New Zealand's local authorities but it is principally the regional and unitary councils who have a role in the area of environmental reporting.

We support the overall purpose of the Bill in creating a national level environmental reporting system to ensure that reporting on the environment occurs on a regular basis and the reporting is transparent, independent, fair and accurate.

Given the role of local authorities in environmental reporting, they have an interest in ensuring that legislation:

- is clear;
- includes a requirement to consult with local government; and, most importantly,
- is consistent and integrated with other legislation/regulations.

The discussion that follows and the specific recommendations are all written with this in mind.

As a precursor to this Bill, a discussion document was released in mid 2011 and Local Government New Zealand made a submission¹ largely in support. The submission made the point strongly that current local government monitoring frameworks are developed to inform at a local or regional level, not national and that this is entirely consistent with the statutory roles, responsibilities and functions of local authorities. This is prescribed by section 35 of the Resource Management Act. There is no statutory role for regional councils in SOE (national level) reporting. Funding of environmental reporting for local and regional purposes is via the rates take and there is no corresponding funding for a local authority role in national reporting.

While the Environmental Reporting Bill provides a focus on national reporting, councils will continue to have their own obligations under section 35 of the Resource Management Act 1991 for regional state of the environment monitoring and reporting. The Bill does not recognise those obligations. Despite that, data from regional councils is already one of the most important sources available for national environmental reporting and will continue to provide information to fulfil reporting requirements for some domains and many topics.

Regional councils are key stakeholders in environmental monitoring and reporting, regionally and nationally, and have been working collaboratively with the Ministry for the Environment to help promote consistency, and improvements in data collection and quality coding standards. This enables the aggregation of data at a national level. Consequently, we strongly support continued engagement and collaboration to ensure that data streams and processes meet both central and local government needs.

¹ <http://www.lgnz.co.nz/home/our-work/submissions/measuring-up-environmental-reporting-a-discussion-document>
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For almost two decades regional councils have actively collaborated with the Ministry for the Environment (MfE) to develop and deliver national environmental indicators. This relationship is currently being formalised with a joint Regional Sector Group/MfE project which involves the regional sector developing and operating integrated regional/national environmental data collection networks. The data will be delivered via widely accessible database(s) and reporting platform(s). One of the matters to be worked through as part of this joint project is the apportionment of costs – there will be additional costs to local authorities having a role in national environmental reporting.

Overall, there is a willingness to collaborate and partner with the Ministry in this area - to work together on information requirements (content, standards, methods, timing). A paper is currently being jointly prepared by Ministry officials and regional sector representatives, setting out governance arrangements and operational details of this project.

Our recent submission to the Ministry for the Environment on the proposed amendments to the National Policy Statement for Freshwater Management 2011² traversed the need for integration across the environmental reporting space. This is specifically relevant in relation to new requirements for accounting for freshwater takes and contaminant loads. Alignment between freshwater accounting (under the National Objectives Framework) and reporting requirements for the “freshwater domain” under this legislation is critical.

While the Bill explicitly states in its explanatory statement that reporting will be based on the best available data and does **not** include any requirement to generate information that is not currently collected, the reporting will inevitably show where there are significant gaps in existing data collection. Therefore, reports using currently “best available data” are unlikely to meet the Bill’s goal of giving New Zealanders “the information they need to understand the condition of their environment, why it is like that, and what that means.”

Regional councils collectively spend some \$30 million dollars collectively on environmental monitoring and reporting. Given this role in environmental monitoring and reporting, it is important to foster this partnership for two reasons. As outlined above, regional councils are critical in providing some of the data/information needed for national environmental reporting; and secondly, any criticism of a domain or synthesis report will be levelled both at regional councils and at central government.

Specific comments

Explanatory note

Consistency with New Zealand’s International obligations

While the Departmental Disclosure Statement notes that the Bill is not intended to give effect to any provisions in international multilateral environmental agreements, it also notes that reporting mandated through the Bill is designed to be consistent with OECD reporting standards. Such provision should be made explicit in the explanation and under Clauses 7(2)(b) and 10(2)(b) where provision is made for reporting on the state of New Zealand’s environment against international standards.

Consistency with the government’s Treaty of Waitangi obligations

The Explanatory note mentions that environmental reports will include information about the impacts of changes in the state of the environment on culture (culture and recreation).

There is no provision in the Bill (or information in the Explanatory note) concerning existing (or future) obligations under those Treaty of Waitangi Settlement agreements that include provisions related to national state of the environment reporting. For example, in the Ngāi Tahu Deed of Settlement 1997 (Section 12.15 Resource Management Act 1991), provisions are made for the Crown, through the Ministry for the Environment,

² <http://www.lgnz.co.nz/home/our-work/submissions/proposed-amendments-to-the-national-policy-statement-for-freshwater-management-2011-npsfm/>

to “pursue the development (in consultation with Te Rūnanga o Ngāi Tahu) of a set of indicators relating to water, air and land... incorporating Maori values”; and to: “work with Te Rūnanga to obtain information on Maori values in relation to land and water”. The intention of these provisions, by definition, is to “help assess the state of the environment” (refer sections 12.15.1 and 12.15.4).

Recommendation

Amend the Explanatory note to:

1. state that reporting mandated through the Bill is designed to be consistent with OECD reporting standards; and
2. refer to obligations under Treaty of Waitangi Settlement agreements.

Clause 2: Commencement

The Act may come into force by Order in Council with the possibility of regulations being made and brought into force by mid-2015. If regulation occurs at the same time as the publication of the first synthesis report (i.e. this report must be published by 30 June 2015), then this does not fit comfortably with the Ministry’s planned consultation over topics. Clause 18 should require that the two Ministers must consult local authorities before recommending the making of regulations for topics (see Clause 18 submission point).

Clause 3: Purpose

We support the production of regular, independent, fair and accurate reporting on the range of environmental domains proposed. We also support ensuring high standards of statistical integrity and robustness. The statistics chosen must accurately represent the relevant topic.

Clause 4: Interpretation

The terms ‘topic’, ‘statistic’, ‘information’ and ‘analysis’ are used throughout the Bill to describe: the contents of and processes to produce synthesis and domain reports; for the disclosure of information; the making of regulations; and for the roles of the Secretary and Government Statistician.

While a meaning for ‘impact topic’, ‘pressure topic’ and ‘state topic’ is included in Clause 18: Regulations, i.e. ‘a topic of a kind referred to topics to be covered in synthesis [and] domain reports’, this provides no definition for the term ‘topic’.

‘Topic(s),’ ‘statistic,’ ‘information,’ and ‘analysis’ must be defined terms in the Bill. It will be essential to have clarity about if and when any of these terms mean:

- a variable to be measured;
- raw data;
- analysed data; and
- some representation of monitoring data, i.e. a statistic to be published by the Secretary and Government Statistician in environmental reports.

Definition of these four terms will also be important for:

- data governance;
- disclosure of information; and
- understanding and assigning intellectual property rights, including data ownership and publication copyrights, between data collectors and the Secretary and Government Statistician.

An additional point is the apparent inconsistency in interpretation [definition] of domains. The marine domain includes items of cultural and historic heritage, while land and freshwater do not. For the sake of consistency we suggest not including this in any domain.

There is no “home” for freshwater or marine biodiversity. Previous biodiversity reporting has focused on terrestrial environments, whereas freshwater and marine reporting has typically excluded biodiversity measures.

We also note that the definitions for some domains do not clearly distinguish between the two e.g. “air domain” and “atmosphere and climate domain”. The definitions need to be as clear as possible. Overall – it is essential that the definition of terms in the Bill are consistent with the definitions and therefore meaning of similar/the same terms used in other regulations and statutes.

Recommendations

1. Include definitions in the Bill for: “topic(s)”, ‘statistic’, ‘information’ and ‘analysis.’
2. Ensure the definitions of the domains are consistent and clear.
3. Ensure that any definitions are consistent with definition of similar/the same terms used in other national regulations and statutes.

Clause 7: Content of synthesis reports; Clause 10: Content of domain reports

Sub-clauses 7 (2)(b) and 10(2)(b) refer to “national or international standards.” There is no specificity about the **type** of standards to be used: monitoring standards, reporting standards, or protocols – and for what purpose.

The Departmental Disclosure Statement (Part Three: Testing of Legislative Content and Consistency with New Zealand’s international obligations) states that the reporting mandated through the Bill is designed to be consistent with OECD reporting standards, and has been tested with the OECD. Information in clauses 7 and 10 about measurement against international standards must make clear the standard type (monitoring and/or reporting) and for what purpose. The Explanatory note should be amended to reflect the discussion in the Departmental Disclosure Statement about the use of OECD reporting standards.

The choice of standards is a matter of policy and standards often form part of a policy goal. Reporting against policy goals is outside of the Purpose of this Bill. We understand that environmental reporting will not be against particular policy goals, and the focus will instead be on statistical trends. This helps to avoid the incorporation of value judgements in environmental reporting.

We note there is a lack of New Zealand specific standards for many of the domains. Instead of standards, there are guidelines in common use (e.g. ANZECC for water) but these are not expressed as standards. The proposed National Objectives Framework (NOF) contains ‘bottom line’ standards for freshwater but these are not set at a level that would be considered suitable for all waterways. Without New Zealand standards, there will be a risk that standards will be ‘cherry picked’ from the wide range of international standards available.

We seek that the Secretary consult on what national standards will be reported against in synthesis and domain reports when these relate to standards prescribed under national/international regulations and statutes. This is essential to ensure integration with other requirements and also to allow local authorities to prioritise their environmental reporting resource.

The Bill states that Synthesis and Domain Reports must describe “...*the impacts the state of the environment and changes to the state of the environment may be having on...:ecological integrity, public health, economic benefits derived from utilising natural resources and cultural and recreation*”. It is anticipated that as currently worded the impacts on economic benefits from utilising natural resources will also take into account the economic costs by default. However, the wording could be reviewed to make this more explicit. This is also entirely consistent

with the concept of “natural capital” that is widely used internationally and that is gaining traction in New Zealand.

We note that social well-being is not included on this list of considerations even though it is an important part of primary legislation (Resource Management Act). The impacts that the state of the environment and changes to it are having on social well-being are an important consideration which should be included in Synthesis and Domain Reports.

We also note that there is a disconnect between estuaries (in the Marine domain) and freshwater (in the Freshwater domain). These two systems are explicitly linked and dependant on each other. Greater recognition of the relationship between estuaries and freshwater is required in the Bill.

Recommendations

1. Amend clauses 7 and 10 to define the type of standards that will be reported against.
2. Amend the Explanatory note to include discussion of the type of standards to be used and to reflect the discussion in the Departmental Disclosure Statement about the use of OECD reporting standards.
3. Prescribe that consultation with local authorities is required in the selection of standards.
4. Amend clause 10(c) as follows:
 - (iii) economic benefits ~~derived from~~ and costs associated with utilising natural resources; and
 - add (v) social well-being.
5. Amend clauses 7 and 10 to ensure adequate recognition of estuaries in the Marine and Freshwater domains.

Clause 8: Frequency of synthesis reports; Clause 11: Frequency of domain reports

The Bill sets a very tight timeframe for publication of the first synthesis report (30 June 2015). We question whether this is achievable given the process steps required under clause 12 which involves: development, consultation, regulations prescribing topic, statistics to measure topic, procedures and methods.

Determination of trends and timeframes to represent information is fundamental. Our scientists point out that three yearly is the wrong temporal scale for many of the indicators that will be measured and should not be the default. For example, we know that we need 5 years of monitoring data to interpret information on the state of freshwater in New Zealand and longer can be required to interpret trends in a meaningful way. Changes and trends in freshwater cannot be meaningfully reported in a 3 year term or reporting cycle but data (parameters) can be updated every year.

The Secretary and the Government Statistician should have a prescribed role to determine the appropriate timeframe for each statistic in clause 13.

How the domain and synthesis reports relate to each other also needs to be reconsidered. Given the close timing between at least one domain report to the synthesis report, repeating or duplicating information may lead to confusion.

If the timeframe is too tight the synthesis report will ultimately be lacking and that will be a risk to reputations. This will impact both regional councils and the Ministry for the Environment.

Recommendations

1. Reconsider the timeframe for the first synthesis report.
2. Amend clause 13(4) to prescribe a role for the Secretary and the Government Statistician to set an ecologically appropriate timeframe for each statistic.

Clause 12: Overview of process for producing environmental reports

We support this process and consider it essential that the Ministry consults with local government on the proposed topics before making regulations as outlined in the Explanatory note.

Clause 13: Roles of Secretary and Government Statistician

If the information that local authorities collect is to be used for environmental reports then this clause should prescribe a requirement for consultation with local authorities.

Recommendations

1. Amend clause 13 to include a new subclause: “The Secretary and the Government Statistician, in deciding what statistics will be used to measure topics prescribed by regulation, must consult with providers of information and analysis for those statistics.”

Clause 16: Disclosure of information

The term ‘environmental reports’ in Clause 16 means synthesis and domain reports (see clause 12 and its explanatory note, and clauses 6 to 11). Disclosure of information provisions must not apply to any environmental report(s) not produced or being produced by the Secretary and Government Statistician.

In interpreting clause 16, publishers’ copyright (including typographical design) and ‘right of first release’ (Statistics Act) must be carefully kept separate from the rights and role of local authorities who hold intellectual property rights for the data they have collected and analysed. The same data may then be used by the Secretary and Government Statistician in their environmental reports. The use of other person’s data by the Secretary and Government Statistician must not prevent or hinder that person’s or organisation’s use of their own information for their own reporting purposes.

Regional Councils will provide much of the data that supports the production of environmental reports. As written this clause could restrict the ability of councils to publish their own information and data where it is used in environmental reports.

The limitation in clause 16 on the use and disclosure of information will potentially impact on Council’s own regional data use and reporting – a function required under section 35 of the RMA. Council collection of information and analysis is undertaken to meet their own obligations, such as State of the Environment reporting and policy development, and as such local authorities need to be able to control its use and release and be unfettered in using and releasing the information.

By way of example, information provided for national reporting is also used for council purposes. An example of this is bathing water results which are collected by each regional council and released for public information. Council data is then aggregated into the national picture. A second example is air quality data. Typically this is provided on each regional council’s website then uploaded to the Ministry for the Environment’s website for national reporting.

Recommendation

Amend clause 16 to include this proviso (or words to this effect): “The disclosure of information provisions do not apply to any environmental report(s) not produced or being produced by the Secretary and Government Statistician.”

Clause 18 Regulations

The sector seeks consultation over the development of any regulations to be promulgated under clause 18.

The Explanatory Note states that “The Ministry plans to consult on the proposed topics before making regulations”. Before recommending the making of regulations under subsection (1), we seek specific provision requiring the Minister for the Environment and the Minister of Statistics to consult local authorities for the purpose of prescribing topics.

Recommendation

Amend clause 18 to include a new subclause: “Before making regulations under (1), the Secretary and the Government statistician must consult local authorities for the purpose of prescribing topics to be covered in synthesis reports and domain reports.”