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Submission on Proposed Environmental Reporting Bill
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Measuring up – Proposed Environmental Reporting Bill

BusinessNZ is pleased to have the opportunity to provide a submission to the Ministry for the Environment on its discussion document entitled 'Measuring up: Environmental Reporting – A Discussion Document', dated August 2011.¹

Introduction

BusinessNZ welcomes the proposals to require regular national state of the environment reports and consistent regional environmental statistics. BusinessNZ considers that there are real benefits to be gained from these initiatives, in terms of developing a better understanding of 'what is' and the light that such information can shine on policy problems, and the effectiveness of the solutions applied to them.

However, BusinessNZ is not convinced that the proposed solution for delivery of the national state of the environment reports – that of the Parliamentary Commissioner for the Environment (the 'PCE') undertaking five-yearly national environmental reporting - is either necessary or desirable. This role is better left to the Ministry for the Environment, under legislation that provides it with a measure of independence.

Subject to who bears the costs and their level, an improvement in the consistency of the environmental statistics collected, on the other hand, appears to be a relatively easy way to lift the quality of environmental reporting.

¹ Background information on BusinessNZ is attached in Appendix One.

BusinessNZ has set out below a number of comments to expand on these views. Its responses to the specific consultation questions are attached to this letter as Appendix Two.

A Lack of Independence – the Right Problem?

BusinessNZ has significant doubts as to the characterisation of the problem (a lack of independence), to which the PCE is the answer. There are a number of elements to this.

Independence is just one of a basket of quality-related characteristics

The issue of independence needs to be set into a broader context, that is, as one of a number of characteristics that speaks to the real issue – that of the overall quality of the national state of the environment reporting.

This implies that the real risks to be addressed are that the reports have been infrequent and unreliable, the process of development has lacked transparency and that, as a result, there has been a lack of confidence in the integrity of the reports. These issues speak to the overall quality of the reporting process and the report itself, and mean that to date, the reports have been incapable of delivering a consistent and coherent view of the national state of the environment. Without change, this will likely continue to be the case. Therefore, the issue of independence needs to be seen in a broader context and given a weighting appropriate to its relative importance to other quality characteristics.

There are also ‘shades’ of independence rather than the black-and-white view of being either independent, or not, as implied in the discussion document. Current legislation is full of examples of statutorily independent function being delivered by a core public sector department or entities acting at arms-length from the Government.²

The New Zealand proposal is at odds with international comparators

Having identified the overall set of risks, it is important to draw a link between them and the proposed solution – a change in the governance arrangements.

Governance is essentially about decision-rights and who should hold them. The implied hypothesis put forward in the discussion document, therefore, is that greater independence from Government decision-rights helps remove day-to-day political influence from the reporting function and in doing so provides a more stable long term basis of information on which stakeholders and Government can rely.

From another angle, the issue is whether the decision-rights in the current New Zealand governance arrangement rests too heavily with the Government and, as a result, gives rise to the identified risks because the development of the plan reflects political and not other, more appropriate drivers.

² The independence of the role of the Government Statistician, as set out in section 15 of the Statistics Act, 1975, is a case in point. Other examples are the Reserve Bank, the Commerce Commission and the Electricity Authority.

This gives rise to the question of whether governance arrangements in other jurisdictions can help shed light on whether the proposed change to the New Zealand governance arrangements is the appropriate response to the mitigation of the risks identified.

The answer to this is an unqualified no. The implied hypothesis is simply not borne out by an investigation of other jurisdictions. As outlined in the PCE's own 2010 report, there are 20 OECD countries where the national state of the environment report is produced by an Environmental Protection Agency (an 'EPA') or some similar such Government agency. A further 9 jurisdictions (excluding New Zealand) get their national state of the environment report produced by a ministry or department.³ In other words, 29 of a total OECD membership of 34, do not weight independence as a characteristic of overall quality any higher than the other set of quality-related characteristics. The New Zealand proposal cannot be described as consistent with international comparators, but as a bespoke arrangement.

By definition, these jurisdictions consider that the best way to achieve a high quality national environmental report is to balance the need for independence by legislative means with a reliance on core public sector accountability disciplines to address the other quality characteristics, such as transparency.

Despite this, the options of either empowering the Ministry for the Environment or the New Zealand EPA to undertake the reporting are dismissed as inferior to the PCE option.

This is not to say that the status quo is appropriate. Given past experience, it is likely that decisions rights may be too heavily invested in Government. However, the solution is not to permanently shed all future decision rights (as implied in the proposal) but instead to more carefully match the solutions to the subtlety of the range of quality-related problems.⁴

Changing governance arrangements is unlikely to be 'fit-for-purpose'

Even if a lack of independence was the primary problem, what evidence is presented for a lack of independence is flimsy at best. The discussion document outlines how:

“...the state of the environment report produced by the Ministry was perceived by some to lack independence, including the PCE.”⁵

Putting aside the obvious incentives of the PCE to criticise the apparent lack of independence, this quote draws on the opinions expressed by some portion of the

³ Report from the Parliamentary Commissioner for the Environment entitled 'How clean is New Zealand? Measuring and reporting on the health of our environment', page 36.

⁴ Indeed, shedding all future decision rights is not without its own set of risks. For example, the PCE states in its submission on the discussion document that it is “inappropriate to define what is meant by environment...” and “...the choice of data and indicators must be at the discretion of the Commissioner.” Such statements potentially imply an open-ended fiscal risk.

⁵ Ministry for the Environment discussion document entitled 'Measuring Up – Environmental Reporting – A Discussion Document', page 12.

twelve stakeholders who participated in the two focus group discussions run by the market research company on behalf of the Ministry for the Environment.⁶ Reliance on the views of such a small sample on which to base any conclusions is inadequate. It also appears to be inconsistent with the market research findings that indicated that:

“ the vast majority of readers are satisfied with the presentational aspects of the Environment New Zealand 2007 Report.”⁷

Yet much is made of this perceived lack of independence, to the extent that it underpins the proposal to transfer delivery of the report to the PCE.

Nowhere in the discussion document are the tangible differences of a more independent report laid out other than generalities about the need to protect New Zealand clean, green image. The need to have information that supports our environmental credentials is important, but no-where in the discussion document is there a clear explanation of where the marginal positive difference to the attainment of this objective lies between the PCE or the Ministry for the Environment or EPA delivering the national state of the environment report.

Neither is any evidence presented in the discussion document that suggests that the broader nature of the broader quality-related risks identified will be addressed by simply changing the governance arrangements under which the report is developed. For example, the PCE itself recognises that it has:

“a small focused staff without the technical capacity to carry out the work that would be required for robust state of the environment reporting.”⁸

The Ministry for the Environment already holds these skills and will continue to do so given its obligation to continue its environmental statistics programme and other reporting obligations. This is a recipe for duplication and confusion of roles and responsibilities, rather than clarity.

Putting aside this risk, even with a level of financial resources that enabled the PCE to acquire the right technical capacity, other risks remain. At the very time when the Government is working hard across a range of portfolios (such as energy) to integrate the consideration of economic and environmental issues, transferring the reporting function to the PCE risks entrenching the separation of economic and environmental issues.

⁶ Unfortunately, the market research study undertaken on behalf of the Ministry for the Environment by Peter Glen Research does not provide the numerical split of attendees between the Government stakeholder forum and the NGO stakeholder forum, nor who the attendees were.

⁷ Report prepared by Peter Glen Research for the Ministry for the Environment entitled 'Market Research Study: A Review of the Environment New Zealand 2007 Report', dated July 2008 where the specific aspects of the report whose adequacy or otherwise being tested related to readability, clarity of information, layout/presentation of information, tables, figures and graphs, and graphics and pictures (in other words, not trivial aspects of the report).

⁸ Report from the Parliamentary Commissioner for the Environment, *ibid*, page 35.

Recent history has not reflected well on the ability of the PCE to deliver quality, unbiased reports where the trade-offs between economic and environmental issues are most stark. Two recent examples where there has been an apparent failure to address where the environment sits against resource use and development are reports on the environmental effects of plans to increase lignite use and the use of smart meters.⁹ BusinessNZ wonders, therefore, about the extent to which the proposal set out in the discussion document will indeed provide:

“ ...a pragmatic and balanced approach to environmental monitoring and reporting in New Zealand.”¹⁰

Fixing the Problem at its Source

BusinessNZ considers that the assessment of the need for the PCE to do the state of the environment report has possibly become caught up in a broader set of concerns about the overall poor perception of the Ministry for the Environment and its ability, more generally, to perform its role. This may have been the case two, or more years ago but BusinessNZ knows from first-hand recent experience that these issues have, or are being, addressed.

Given this, it is BusinessNZ’s strong preference for any lingering problem to be addressed at its source – the Ministry for the Environment – rather than simply absolving it of its duty to deliver high quality national state of the environment reports. It is hardly surprising that in the absence of a clear legislative requirement to regularly deliver national state of the environment reports that they have been intermittent and of dubious quality when completed. Independence can be demonstrated by Ministry for the Environment if given the chance.

As with other jurisdictions, a balance of independence achieved by legislative means along with a reliance on core public sector accountability disciplines, is likely to be the most effective solution to this issue particularly when combined with the general lift in the performance of the Ministry for the Environment.

Address the Issue of Access to High Quality, Consistent Statistics

At the core of any reporting must be the collection of a consistent and reliable stream of data. An improvement in the consistency of the environmental statistics collected appears to be a relatively easy way to lift the quality of New Zealand’s environmental reporting and BusinessNZ supports the initiative to do so.

However, in light of the PCE’s desire:

“to be free to choose the datasets to use, and also to be free to choose which indicators are best for diagnosing the state of different domains of the environment.”¹¹

⁹ Reports entitled ‘Lignite and climate change: The high cost of low grade coal’, dated December 2010, and ‘Smart electricity meters: How households and the environment can benefit’, dated June 2009.

¹⁰ Ministry for the Environment discussion document, *ibid*, page 7.

¹¹ Parliamentary Commissioner for the Environment submission to the Ministry for the Environment on the Ministry for the Environment discussion document, dated 29 September, 2011, page 3.

BusinessNZ cannot see how the separation of report delivery from the specifics of the expanded regulation-making power would easily work particularly if the expansion of the regulation-making powers is expected to improve the quality of the data available to support the state of the environment reporting. This separation would appear to create an unnecessary co-ordination problem, potentially creating unnecessary uncertainty and cost amongst regional councils. This could be avoided by aligning the two roles within one organisation.

Benefits of the Proposals must be shown to be Greater than the Costs

BusinessNZ is concerned about the complete absence of financial information from the discussion document and what qualitative information is provided is extremely 'soft'. While BusinessNZ appreciates that a full cost-benefit analysis will be undertaken once a decision has been taken to proceed with the proposal, greater effort to provide a quantitative assessment of the costs and benefits of the proposals would have helped submitters form their view.

At a minimum, BusinessNZ expected an estimate of the additional cost expected to be incurred by the PCE, and the savings, if any resulting from the Ministry for the Environment no longer undertaking the function. Neither is provided but both should have been readily available.¹²

Of particular concern is the absence of any recognition of the potential cost flow-through to business of the proposal to improve the consistency of environmental statistics. BusinessNZ would expect this aspect to be explicitly addressed in the full cost-benefit analysis.

However, what is outlined in the discussion document is revealing. Two key points stand-out from the discussion document:

1. the evidence presented that the benefits of the proposals will exceed the costs is hardly over-whelming. The language used is timid. For example, "the nationwide benefits of the Bill (including the PCE undertaking five-yearly reporting) *are expected to be positive.*"(emphasis added)¹³; and
2. that the majority of the benefits emerge from the proposal to legislate for data consistency, and not the proposal for the PCE to deliver the national state of the environment report.

The Government has recently agreed to proceed with a Regulatory Responsibility Bill. The likely purpose of such a Bill will be to establish a set of principles of responsible regulation, or good law-making. It might also be expected to provide for any incompatibility with the principles to be justified. BusinessNZ acknowledges that

¹² Interestingly, – the PCE in its submission (op cit, page 5) does not estimate the additional cost though it does suggest that "a task as big as environment reporting has the potential to crowd out most other work" leaving one to conclude that the additional cost would be roughly the size of its current appropriation of \$2.34 million.

¹³ Ministry for the Environment discussion document, *ibid*, page 5.

this is early-days in the regulatory process but nonetheless BusinessNZ considers the cost-benefit information set out in the discussion document would likely fall foul of the requirements of any future Regulatory Responsibility Bill. The rigors of the Bill provide a good discipline from the very outset of a regulatory proposal.

Summary

BusinessNZ supports a lift in the quality of New Zealand's environmental reporting. The periodic reporting of key environmental indicators at a national level will underpin New Zealand's generally good environmental credentials and serve to highlight those areas in which improvements can continue to be made.

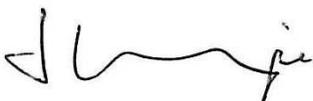
However, BusinessNZ is sceptical of the singular focus on the issue of independence and the implication that only the delivery of these reports by the PCE is sufficient to address this issue. BusinessNZ considers that the supposed benefits of total independence from Government of the environmental reporting function are exaggerated at best. At worst they are illusory.

The ability of core public sector agencies to deliver independent work is not unknown and neither is independence the only characteristic whose presence will enable a credible report to be delivered. There is a broader set of quality attributes that are equally important to the delivery of a national state of the environment report. These include consistent statistics.

Given this, there is no need for the design and implementation of a bespoke New Zealand system for national state of the environment reporting. Instead, the Government should legislatively confer a measure of independence on the Ministry for the Environment along with a greater measure of reliance on core public sector accountability disciplines to address the other quality characteristics such as transparency. This, combined with the second element of the proposals (regulations to ensure the delivery of consistent data), will help avoid duplication and operational confusion.

This approach would also preserve the independence of the PCE to act more generally as a Parliamentary watch-dog, calling Governments to account as it sees fit on issues which may, or may not include the quality of environmental reporting. This is its proper and fit role.

Yours sincerely



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BusinessNZ

APPENDIX ONE: ABOUT BUSINESSNZ

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), BusinessNZ is New Zealand's largest business advocacy body. Together with its 73 strong Major Companies Group, and the 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

APPENDIX TWO: RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

<u>Consultation Question</u>	<u>BusinessNZ Response</u>
<p>1. Do you agree with the issues identified above? Have the main issues been defined accurately?</p>	<p>Yes. BusinessNZ agrees with the headline characterisation that there is a lack of statutory obligation to require regular and independent environmental reporting, and that there is inconsistent regional state of the environment reporting programmes.</p> <p>However, as set out in the attached cover letter, BusinessNZ does not agree with the almost exclusive focus on the issue of independence. BusinessNZ considers it appears to have been given unnecessary prominence in order to deliver a pre-determined outcome, rather than there having been a broader consideration of the range of quality-related characteristics that are necessary to deliver a high quality national state of the environment report, and assessing, in an even-handed manner, who would be best to deliver that bundle of characteristics.</p>
<p>2. Are there any other issues that have not been considered?</p>	<p>BusinessNZ would have liked to have seen a discussion about how the proposals will advance New Zealand's growth agenda, and more specifically, the Government's green growth agenda. Generic statements about the New Zealand's clean and green image are interesting, but not a sufficient basis on which to make regulation.</p>
<p>3. What is the scale of the problem? Which is the bigger issue: the lack of statutory obligation requiring regular independent state of the environment reporting or inconsistent state of the environment monitoring?</p>	<p>BusinessNZ considers that the two issues identified warrant action by the Government.</p> <p>BusinessNZ also considers that the lack of regular, credible reporting on the state of New Zealand's environment is also a gap, and too the inconsistent state of environmental monitoring. Both are of equal importance. What BusinessNZ objects to is the characterisation of the first issue ("requiring regular <i>independent</i> reporting") and where that characterisation has falsely led the analysis.</p>
<p>4. Do you agree with these objectives? Please give reasons.</p>	<p>It is important that it is clear who is responsible for undertaking the reporting, and it is also important that high quality environmental statistics are available.</p> <p>However, it is unclear why the role of state of the environment reporting must be independent of Government. This objective potentially makes a sham of the consultation process as it can only lead to one outcome - delivery of the report by a non-Governmental agency (such as a University or some other suitably qualified third party) or an Office of Parliament. As such, it biases the outcome towards the preferred solution.</p>

<u>Consultation Question</u>	<u>BusinessNZ Response</u>
Response to Q4 cont	<p>In BusinessNZ’s view, the second objective should be reworded to reflect a desire to have a high-quality report delivered. For example:</p> <p style="padding-left: 40px;">“The state of the environment report is credible, and can be relied upon by its users to reflect a balanced approach to environmental reporting.”</p> <p>This reflects the Ministry for the Environment’s own words from page 7 of the discussion document. In addition, the desired option should be shown to deliver a net public benefit and this too should be a criterion to be met by a preferred option.</p>
5. Do you agree with the assessment criteria? Please give reasons.	<p>There is no assessment criterion that relates to the need for the solution to the reporting requirement being the least net-cost option. This needs to be added.</p> <p>In addition, it is unclear what the criterion “Be cost-efficient” in the context of consistent statistics actually means. While BusinessNZ agrees that the solution should be able to be implemented with minimal administration and compliance costs, the preferred option should be the one whose net present value of costs and savings are the lowest (in other words, the least net-cost option). Both proposals should use the same criterion in this regard.</p> <p>Criterion B states that:</p> <p style="padding-left: 40px;">“Trusted national state of the environment reporting <i>requires an element</i> of independence.....” (emphasis added)</p> <p>BusinessNZ considers this to be an appropriately balanced view of the need for independence and that this more balanced view should be reflected throughout the rest of the discussion document.</p>

<u>Consultation Question</u>	<u>BusinessNZ Response</u>
<p>6. Do you agree with the preferred options? Please give reasons.</p>	<p>BusinessNZ considers that the Ministry for the Environment have considered the appropriate range of options with respect to the environmental reporting proposal, but do not agree that the best option has been chosen.</p> <p>BusinessNZ considers that in unduly over-weighting the characteristic of independence, this has skewed the choice of option towards the PCE. As set out in the cover letter, independence:</p> <ol style="list-style-type: none"> 1. is simply one of a basket of quality-related characteristics (frequency, transparency, credibility, accountability etc being others); and 2. comes in a variety of 'shades', with the desired choice of shade able to be conferred in legislation on the entity best able to deliver the basket of quality-related characteristics. <p>It would be appropriate for regulation-making powers under the RMA be used to ensure that consistent statistics are delivered. However, BusinessNZ has a note of caution – it is important, in applying this new power that the Ministry for the Environment does not fall in to the trap of using it to collect extraneous statistics. The statistics collected should be strongly focused on the environmental state of the nation reporting, and not turn into a broader, fishing expedition. This, in turn, speaks to the importance of linking the reporting and data collection functions, and the need to ensure that unreasonable additional costs are not imposed on regional authorities who will, in turn recover these from businesses and households.</p>
<p>7. Is there an alternative option that has not been considered?</p>	<p>BusinessNZ was interested to see that in Denmark, the Aarhus University produces the report. It is not clear whether such an option was dismissed, or simply not considered. If it were to be considered, it could be delivered under contract to the Ministry for the Environment. This would retain an appropriate level of Government over-sight, but provide for a strong measure of independence.</p>
<p>8. To what extent do the options address the identified problems?</p>	<p>As noted above, the options appear to be an appropriate reflection of the problems identified. The problem that BusinessNZ has is that the problem set is too narrow (focused on independence) and that this has resulted in a skewing of the options.</p>
<p>9. Are you aware of any other costs and benefits of the options?</p>	<p>See the cover letter attached.</p>

<u>Consultation Question</u>	<u>BusinessNZ Response</u>
10. Do you have any comment about which option would deliver the highest level of net benefit?	<p>BusinessNZ considers that if the broader set of quality-related characteristics was taken into account, the Ministry for the Environment option for environmental reporting (under a legislative mandate) would be most likely to deliver the highest net-public benefit.</p> <p>BusinessNZ is unsure that under this option an Advisory Committee would be necessary, rather the expectation should be that the Ministry for the Environment get its report peer-reviewed. This would contribute towards keeping the costs of this option low.</p>
11. What are the pros and cons of the proposed Environment Act amendment?	BusinessNZ does not support an amendment of the Environment Act to provide for the PCE to deliver the report. BusinessNZ considers that the Ministry for the Environment should be expected to lift its game with respect to the quality of its reporting and that the PCE should retain its right to critique what the Ministry for the Environment does in that regard.
12. Is five-yearly reporting an appropriate reporting timeframe? If not, what time period would you recommend?	Yes.
13. What do you think about the proposed environmental domains that the Parliamentary Commissioner for the Environment should report on in the state of the environment report? What topic areas or requirements (if any) would you suggest?	See response to Q11 above. Should the Ministry for the Environment undertake the reporting function, it should not be constrained to report on a specific set of environmental domains.
14. Outline any problems you perceive with the proposed RMA amendment?	The imposition of additional costs on regional authorities who then pass those costs on to businesses and households.
15. Which environmental domains (e.g., fresh water, land, oceans) do you think should be prioritised for improvements in consistency?	Fresh water, land, oceans, in that order.
16. Have we accurately reflected the high level costs and benefits arising from the proposals for an Environmental Reporting Bill? Please give reasons.	See the attached cover letter.
17. Can you identify any other high level costs and benefits?	See the attached cover letter.
18. Do you have any information you would like to see included in the final cost-benefit analysis that will be carried out after the submissions are received and analysed?	See the attached cover letter.