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**THE ENVIRONMENTAL REPORTING BILL  
2014**

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## ABSTRACT

This paper reviews the development of State of the Environment Reporting both internationally, and with a specific emphasis on Environmental Reporting In New Zealand. It provides a summary of the various uses of State of the Environment Reports and their use in policy development, and highlights the importance of reporting independence from Executive Governments to ensure that the State of the Environment Reports are accurate and trusted. The essay provides a brief description and analysis of the two main frameworks used in State of the Environment Reports, and compares them to the framework developed by the Ministry for the Environment for use in New Zealand. The essay then goes on to discuss the Environmental Reporting Bill introduced by the New Zealand Government in February 2014. The essay concludes that the Environmental Reporting Bill in its current state has serious flaws that will result in State of the Environment Reports that are not independent and will not provide a comprehensive assessment of the state of New Zealand's environment.

## *I Introduction*

In order for a nation to ensure that its policies and actions amount to good environmental governance and sustainable development; the state requires an accurate understanding of the state of the environment. To this end, the use of State of the Environment Reports (SOER) has developed within both the international community and in individual states. Firstly this essay will briefly discuss the importance and the development of these reports. Secondly the essay will discuss some of the different characteristics of SOER. Next the essay will discuss two of the most widely used frameworks of SOER with a comparison between the two most widely used frameworks internationally, and the proposed framework developed for use in New Zealand by the Ministry for the Environment. The essay will then go on to consider the current environmental reporting situation in New Zealand, with a brief discussion of the importance of accurate environmental reporting in the New Zealand context. The final section of this essay will critique parts of the Environmental Reporting Bill (ERB) introduced by the New Zealand Government on 20 February 2014. It will discuss the ERB in its current form, with particular emphasis on the non-disclosure clause and on the proposed content of the reports. Finally some recommendations for improvement of the

ERB and the proposed New Zealand framework will be offered.

## *II Why are environmental reports necessary?*

Environmental Reports are mainly used to support decision making, through the use of accurate environmental information.<sup>1</sup> SOER provide the public, the government, scientists, corporations, and stakeholders with information on the current state of the natural environment. Accurate information can demonstrate to the above groups the effect their collective and individual actions are having on the environment not only where they live, but also nationally and even internationally. This information can be a major driver of change in behaviours and attitudes to the way that society treats the environment and uses the natural resources.

The information provided by a SOER assists in the development of environmental policy by providing an evidence basis to work from. The reports assist the public and stakeholders in making informed choices about future development, and the availability of environmental information means that these groups are better able to participate in the decision and policy development process, through the identification of problems and issues that need to be addressed.

SOER illustrate trends in the environment over time, and help assess the impact of actions that have been taken by those who use the natural environment over a sustained period. Reliable information is necessary to ensure that planned policies and actions are based on an accurate understanding of the

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<sup>1</sup> European Environment Agency *State of the environment reporting: Institutional and legal arrangements in Europe* (1999, EEA, Copenhagen).

environmental situation, at the local, regional, national and international levels, and the availability of accurate environmental information enables the public to participate in decision making.

When the public is misinformed about the environmental situation; where there is a difference between the state of the environment and the public's perception of the state of the environment, better environmental policies will often be dismissed as unnecessary.<sup>2</sup> However, when the public is informed, the electorate is able to take that information to push governments to act on any problems that have been identified.<sup>3</sup> Where environmental information is available, then policy makers become accountable for environmental decisions the same way they are accountable for economic and social ones.

### *III Development of Environmental Reporting*

Environmental reporting has slowly formed along with the use of ideas of sustainable development and the rise of international treaties on environmental issues, such as the Convention on Biological Diversity, and the United Nations Framework on Climate Change.<sup>4</sup> Many scholars argue that for a nation to meet their obligations under these conventions, accurate environmental reporting is necessary,<sup>5</sup> and indeed, regional, national and international environmental issues cannot be dealt with without an accurate understanding of the situation.

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2 Ken F D Hughey and others "Application of the Pressure-State-Response Framework to perceptions reporting of the state of the New Zealand environment" (2004) 70 *Journal of Environmental Management* 85 at 91.

3 Allen Hammond and others *Environmental Indicators: A systematic approach to measuring and reporting on environmental policy performance in the context of sustainable development* (1995, World Resources Institute) at vii.

4 Convention on Biological Diversity and UNFCCC

5 OECD *Policies for a better Environment: Progress in Eastern Europe, Caucasus and Central Asia* (2007, OECD, Paris) at 78.

Originally, SOER developed in Europe and North America as a response to the degradation of the environment in urban areas in the 20<sup>th</sup> Century.<sup>6</sup> They were fragmented “engineering-driven approaches” that focused on particular issues such as water quality in a specific location,<sup>7</sup> and were produced in response to public health concerns.<sup>8</sup> The 1960s saw SOER that reported on environmental catastrophes, such as the effect of acid rain on the forests in Europe, and issues such as the collapse of fish stocks due to overfishing.<sup>9</sup> Land use change also began to be reported, with the use of aerial photography and then satellite imagery enabled landscape comparison.<sup>10</sup> This data came not only from governments, but also from the records of companies – such as the records of commercial fisheries operations that fished the same area for a long time. These original SOER were not integrated and tended to focus on one particular issue, such as fertilisation run-off into waterways causing algal blooms.<sup>11</sup>

Over the last 30 years however, with the development of scientific understanding of ecosystems, and the rise of environmental awareness, SOER have become much more integrated, focusing on how human actions cause change or degradation, and what effect those changes have on ecosystems as a whole. SOER began to look specifically at the relationship between the environment and socio-economic processes.<sup>12</sup> They are increasingly used to evaluate the effectiveness of environmental protection measures, other actions taken as a response to this changing environment, and also how the

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6 David J Rapport and Ashbindu Singh “An Eco-Health based framework for State of the Environment Reporting” (2006) 6 Ecological Indicators 409 at 412.

7 Above, at 410.

8 Above, at 412.

9 Above, at 412.

10 Above, 412.

11 Above 413.

12 Above n 1.

changing state of the environment has an impact upon human health, society, culture and well-being.<sup>13</sup>

Recently, the main drivers of SOER have been intergovernmental organisations such as the European Environmental Agency (EEA), the Organisation for Economic Cooperation and Development (OECD) and the United Nations Environmental Program (UNEP) at the national and international level, along with the Global Reporting Initiative at the corporate level.<sup>14</sup> These organisations have been producing publications on SOER with the aims of assisting nations to better understand their natural environment so that they are able to institute environmental protection measures, assisting in the evaluation of the results of those protective measures, and increasing the level of public participation in environmental protection through better information provision.

#### *IV Key Characteristics of State of the Environment Reports*

This essay will not provide an exhaustive list of the characteristics of SOER, but will look at some of the more important, in the author's opinion, characteristics.

##### *A Questions to be answered and target audience*

Firstly, a SOER will need to answer 4 essential questions; What is happening? Why is it happening? Are the changes in the environment significant? And what is, or what could be, society's response?<sup>15</sup> The first question illustrates the current

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<sup>13</sup> Tomas B Ramos and others "An open participatory conceptual framework to support State of the Environmental and Sustainability Reports (2014) 64 Journal of Cleaner Production 158 at 159.

<sup>14</sup> Above, at 159.

<sup>15</sup> European Environmental Agency *Questions to be answered by a state-of-*

state the environment is in, and also demonstrates trends in the environment over time. The second question illustrates causes of change, whether caused by human activity either directly or indirectly. The third question should focus on current and future changes in the environment and will provide the first step in an evaluation of environmental policy. The final question regarding society's response considers both the current action to address environmental change, and also at future actions. It provides the second part of the evaluation of the effectiveness of policy. These questions can be answered in different ways, depending upon the target audience of the SOER. If the target audience is policy makers, then the focus will be on how the current policies are affecting the environment, and how they can be improved. If the target audience is scientists, however, then the questions will be answered in a more technical manner that would not be easily understandable by the public.

#### *B Statutory basis*

Secondly, the author considers that a statutory basis for the production of SOER is needed. This is to ensure that SOER are published regularly, due to the necessary nature of SOER. In her 2010 report *How Clean is New Zealand?* The Parliamentary Commissioner for the Environment considered that statutory compulsion for the production of SOER was necessary in order to ensure accountability.<sup>16</sup> If there is not a statutory basis for the production of SOER, then a state may not have adequate monitoring and reporting procedures in place; where SOER are published 10 years apart,<sup>17</sup> with the result that the public's perceptions of the state of the environment does not match the

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*the-environment report* (2000, EEA, Copenhagen) at8.

<sup>16</sup> Parliamentary Commissioner for the Environment "How clean is New Zealand? Measuring and reporting on the health of our environment" at 32.

<sup>17</sup> Above, at 8.



actuality.<sup>18</sup>

### *C Independence*

Thirdly and perhaps most importantly, is the characteristic of independence. It is important that state of the environment reports be independent from the government, so that they are not “skewed by political framing and objectives, no matter who is in government.”<sup>19</sup> Policy makers who are too close to the SOER ensure that the SOER loses credibility. It is widely accepted that the auditor cannot audit the system of which she is a part without the appearance of, or actual, bias. The appearance of bias can often have on those who read SOER the same effect as actual bias; the audience for the SOER loses trust in the environmental information provided. When environmental data is used as a justification for policy it is necessary to demonstrate that the environmental evidence is both real and credible, especially in the contemporary context of rising environmental awareness and action, versus the resistance to better environmental protection and policy due to the economic cost these policies will have on entrenched interests.

### *D Data analysis and technical capacity*

The next characteristic is one of data collection and analysis. In order to produce a SOER, massive amounts of data is required to be collected. Often, the data collection and analysis is not a centralised process,<sup>20</sup> instead the environmental data to be used and analysed is collected from many different sources such as official statistics, regional authorities, non-governmental

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<sup>18</sup> Ken F D Hughey and others, above n 2, at 92.

<sup>19</sup> Royal Forest and Bird Protection Society of New Zealand Inc “Submission to the Local Government and Environment Committee on the Environmental Reporting Bill 2014” at 19.

<sup>20</sup> EAA, above n 1, at 5.

organisations, companies, universities and scientists. The data is then analysed and framed in such a way as to illustrate the state of the environment. In order for this to be done, the reporting body needs the ability to require the provision of environmental information from those that hold it. This can be extremely difficult, and many reporting bodies have observed problems with data availability.<sup>21</sup> Firstly the bodies have noted an issue with gaps in available information; where the information required does not exist, and secondly, where purchasing or leasing data that is commercially sensitive or is subject to intellectual property, has a high associated cost.<sup>22</sup> Also bound up with this characteristic is the need for technical capacity. The body that produces the report needs to be well funded to ensure that, not only do they have access to the necessary environmental information, but that they have the resources to analyse the data. All SOER will require raw data analysis of some kind which will require the employment of independent experts with the technical capacity to provide the analysis – whether those experts are employed to write parts, or all, of the SOER, or purely for data analysis function. For any nation, in order to produce an accurate assessment of the state of the environment will require time and generally speaking, large amounts of money.

#### *E Access to information*

This is one of the more important characteristics of SOER; that they are easily accessible by the public, stakeholders and policy makers who will use the information. Environmental data should be accessible to the public both in an “un-summarised, un-aggregated form”<sup>23</sup> and as a summarised analysis of the raw

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<sup>21</sup> EAA above n 1, at 35.

<sup>22</sup> Above.

<sup>23</sup> PCE above n 16, at 28

data. Putting this environmental information on the internet is one of the best ways to ensure that this information reaches the target audiences. If the raw data is uploaded to the internet, then third parties will be able to provide their own analysis of that information which will provide independent verification of the analysis, and will also ensure that the information reaches the widest possible audience. As the author noted in the research process of this essay, easily accessible information allows for a comparison between regions and nations, and can provide important information that feeds into the discussion of international responses to environmental issues such as climate change and biodiversity.

## *V Frameworks*

This essay will discuss two frameworks; the Pressure-State-Response (PSR) framework developed by the OECD, the Driver-Pressure-State-Impact-Response (DPSIR) framework developed by UNEP and used by many, including the EEA. Frameworks in environmental reporting are essentially a way of organising and interpreting information so that it makes the most sense to the target audience; it takes a set of environmental indicators and uses them to establish the state of the environment; trends over time; and most importantly they demonstrate causality. Indicators quantify and simplify information so that the significance is better and easier understood.<sup>24</sup> Indicators are values which are derived from the analysis of raw environmental data.<sup>25</sup> They are not intended to provide a comprehensive analysis the state of the environment, but instead are intended to demonstrate trends, and highlight issues and changes that potentially need to be further examined

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<sup>24</sup> Allen Hammond, above n 3 at 1.

<sup>25</sup> Organisation of Economic Cooperation and Development  
“Environmental Indicators: Development” OECD Reference Paper, 2003,  
at 5.

and addressed.<sup>26</sup>

#### *A Pressure – State - Response*

This PSR framework was developed and is used widely by the OECD to assist in environmental policies and reporting.<sup>27</sup> The framework essentially says that humans and their activities (such as agriculture, and energy production) exercise pressure on the environment (Pressure). These pressures affect the quality and natural resources of the environment (State). Society responds to these changes in the environment by developing new environmental, economic and societal policies, and also by changing public attitudes and behaviour.<sup>28</sup>

This framework is considered to be one of the easiest to understand, and is also considered to be neutral in nature as the framework simply demonstrates the link between cause and effect, without classifying either as 'good' or 'bad'.<sup>29</sup> The framework demonstrates the interconnectedness of human activities and the environment, and it also demonstrates the effect of policies and actions over time, meaning that those policies and actions can be evaluated for effectiveness.

#### *B Driver – Pressure – State – Impact - Response*

The second framework that will be discussed is the DPSIR framework, which is essentially an extension of the PSR framework.<sup>30</sup> This framework is used throughout the European Union, both at a national level and at the European level.<sup>31</sup> It is

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<sup>26</sup> Above at 14.

<sup>27</sup> Above at 21.

<sup>28</sup> Above.

<sup>29</sup> Above.

<sup>30</sup> UNEPP Training Manual on Integrated Environmental Assessment and Reporting in Africa (2007) at 3.2

<sup>31</sup> EEA above n 15.

also widely used in environmental reporting and integrated environmental assessment throughout Africa, where it is promulgated and taught to nations by UNEP.

This states that the driving forces of social and economic human development (Driver) place pressures on the environment. Pressures in this framework need to be divided into two categories; underlying pressures and actual pressures (Pressure). Underlying pressures are things like poverty, and actual pressures are things such as deforestation. As a consequence of the pressures placed, the state of the environment changes (State). This change leads to an impact on human health, society, and economy (Impact) that forces a societal response (Response), which eventually goes on to feed into the driving forces and so on.<sup>32</sup>

This framework also demonstrates the cause and effect relationship, but it differentiates from the PSR framework in that it analyses how the changes to the environment have an impact upon humans; instead of providing a one way analysis. This, in the opinion of the author, is the most effective framework for SOER. The cyclical nature of DPSIR clearly illustrates the interconnected nature of the human-natural environment relationship. This framework recognises that the state of the natural environment has a large impact upon society and human health.

### *C The New Zealand Pressure-State Framework*

In February 2014 the New Zealand Ministry for the Environment released *A Framework for Environmental Reporting in New Zealand* which outlines the framework

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<sup>32</sup> UNEP above n 30, at 6.

intended for use in New Zealand SOER.<sup>33</sup> This framework will be Pressure-State,<sup>34</sup> with the intentional exclusion of the ‘Response’.<sup>35</sup> Despite having used the full Pressure-State-Response framework in the previous environmental reports produced by the Ministry for the Environment,<sup>36</sup> this framework, the Ministry suggests, will be effective and will include information and analysis on the “dependencies and impacts related to social, economic and cultural use of our natural resources.”<sup>37</sup> The reason provided for removing the ‘Response’ is that the Ministry considers that responses to environmental issues that are raised by SOER “constitute policy advice, and are likely to be included in documents such as the Ministry’s *Briefing to Incoming Ministers* following an election.”<sup>38</sup> The author considers that this framework will ensure that important information on the evaluation of environmental policy will never reach the public, ensuring that the electorate and stakeholders will not be able to effectively participate in discussions of environmental policy and issues of environmental protection. The argument that evaluative analysis is only necessary at the Ministerial level indicates that the executive Government does not want an informed electorate that has ability to hold it to account for its environmental policy. This is truly a disturbing indication of the lack of transparency which is currently involved in environmental reporting in New Zealand.

## *VI New Zealand Environmental Reporting*

On 20 February 2014 the Government introduced the

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<sup>33</sup> Ministry for the Environment *A Framework for Environmental Reporting in New Zealand* (February 2014).

<sup>34</sup> Above at 12.

<sup>35</sup> Above.

<sup>36</sup> Ken F D Hughey and others, above n 2.

<sup>37</sup> Ministry for the Environment, above n 33 at 12.

<sup>38</sup> Above, at 12

Environmental Reporting Bill (ERB), which is intended to mandate the regular, independent and credible reporting on the state of the environment of New Zealand. The ERB has had its first reading on 5 March 2014, and was supported by New Zealand National, Green party, Maori Party, ACT New Zealand and United Future, while Labour and New Zealand First both opposed the ERB at its first reading,<sup>39</sup> due to the issues with the ERB as highlighted below.<sup>40</sup> and has been sent to the Local Government and Environment Committee, who will publish their report in September of 2014 after the submission period.

#### *A The New Zealand reporting context*

With most of New Zealand's economic activity based on various uses of the natural environment, from dairy farming, the exploitation of hydrocarbons to eco-based tourism, and with the importance that the natural environment plays in the social and cultural uses of New Zealanders, the natural environment is integral to life in this country. From building a new home or a highway to the allowable catch assigned to recreational fishermen, these activities all have an impact. Information about the impact our uses of the natural resources have is necessary to enable us to more effectively regulate and prioritise these activities, especially at a national level. Accurate environmental information provides New Zealanders with an accurate basis from which environmental policy can be set by the government.

National state of the environment reports in New Zealand are particularly important due to the legislation we have for dealing with economic development and environmental concerns under the Resource Management Act 1991 (RMA). The RMA has created a system of the integrated management of resources, for

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<sup>39</sup> 39 (5 March 2014) 696 NZPD 16357.

<sup>40</sup> 40 Ibid.

which environmental information is necessary in order to enable the development of good decision making at the national and regional level. SOER reports, if independent and accurate, will provide a valuable resource to help determine national standards, create action plans for mitigating detrimental effects, will provide evaluation information on the effectiveness of such plans, and they will help establish baselines from which changes and trends can be measured.

### *B Current Environmental Reporting in New Zealand*

Currently the Ministry for the Environment is the main body that is responsible for the production and publication of national environmental data and reports, but this is not yet statutorily mandated, meaning that our environmental reporting processes are severely lacking. So far, only two national state of the environment reports have been released; and both have been widely criticised on a number of grounds. The 2007 report was criticised on the basis that that the report was not independent, that it did not have a clear purpose, that some of the information it contained was neither useful or trusted, that there were significant gaps in the information provided, and finally that the report was not independent.<sup>41</sup>

The Ministry for the Environment does not itself collect environmental data, but rather the Ministry collates the data which is gathered from regional councils, Crown Research Institutes, other government agencies (including Statistics New Zealand), scientist and other sources.<sup>42</sup> However, the gathering and reporting of environmental information is currently only mandated for local and regional councils, which are required to monitor and report on the state of the environment under their

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<sup>41</sup> PCE, above n 16 at 9.

<sup>42</sup> As above at 12.



territorial jurisdiction.<sup>43</sup> One of the problems with this system has been that the data collected by these different agencies has not been standardised, meaning that the information cannot be used for national reports without that standardisation.<sup>44</sup> While the Ministry for the Environment has been working with the regional councils over the past few years to help integrate and standardise the environmental data, a body that deals specifically with providing national reports will better help accomplish this standardisation goal.

In her 2010 report, the Parliamentary Commissioner for the Environment (PCE) identified “key properties that are critical to improving state of the environment reporting in New Zealand”<sup>45</sup> which were independence, accountability, technical capacity and the accessibility of the data to the general public. The *OECD Environmental Performance Review of New Zealand* of 2007 recommended, again, that national state of the environment reporting be instituted on a regular basis. The Review considered the history of national environmental reporting in New Zealand, and emphasised stop-start nature of New Zealand’s SOER. The OECD also recommended that national level reporting be tailored to the RMA implementation requirements.<sup>46</sup>

## *VII The Environmental Reporting Bill*

The stated purpose of the ERB is to mandate a national level reporting system that will ensure that SOER are produced regularly, and to ensure that the SOER are independent, fair and

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<sup>43</sup> Resource Management Act 1991, section 35.

<sup>44</sup> PCE Above n 16 at 9.

<sup>45</sup> PCE above n 16, at 8

<sup>46</sup> Organisation for Economic Cooperation and Development *OECD Environmental Performance Reviews New Zealand* (OECD Publishing, Paris, 2007) at 169.

accurate. The purpose (clause 3) has some drafting issues,<sup>47</sup> and includes within it statements that are not purposes. For instance, clause 3(a) provides that the purpose is to “require regular reports on the state of the New Zealand environment as a whole”, while clause 3(b) provides that the purpose is to “require regular reports on the state of the air, atmosphere and climate, freshwater, land and marine domains”.<sup>48</sup> Clause 3(b) is not a purpose; it is a description of what the ERB mandates is done, and the inclusion of ‘as a whole’ in clause 3(a) is ambiguous.<sup>49</sup>

#### *A Synthesis and Domain Reports*

The ERB provides that the chief executive of the Ministry of the Environment (the Secretary) and the Government Statistician must jointly provide two types of reports on the environment; synthesis and domain reports.<sup>50</sup>

Synthesis reports are intended to be three yearly reports that describe, in relation to the topics set out in the regulations,<sup>51</sup> the state of New Zealand's environment as a whole, the pressures that are causing or have the potential to cause changes to the environment; impacts that the state of the environment or changes to the state of the environment may be having on ecological integrity and public health, the economic benefits derived from the use natural resources and the benefits culture and recreation. Importantly, synthesis reports must also include information on changes to the environment over time, and how the national state of the environment measures against national

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<sup>47</sup> Fish and Game New Zealand “Submission to the Local Government and Environment Committee on the Environmental Reporting Bill 2014” at 3.

<sup>48</sup> ERB at clause 3(b)

<sup>49</sup> Parliamentary Commissioner for the Environment “Submission to the Local Government and Environment Committee on the Environmental Reporting Bill 2014” at 5.

<sup>50</sup> ERB at clause 7 and at clause 10

<sup>51</sup> ERB clause 7(1)

or international standards.<sup>52</sup>

Domain reports cover the various domains of air, atmosphere and climate, freshwater, land and marine. These reports must describe, in relation to the topics set out in the regulations,<sup>53</sup> the state of the domain including descriptions on biodiversity and dependent ecosystems, pressures that are causing or have the potential to cause changes to the domain; impacts that the state of the environment or changes to the state of the environment may be having on ecological integrity, public health, economic benefits derived from utilising natural resources and culture and recreation.

The ERB also provides that the Secretary and Government Statistician are not required to include in either synthesis or domain reports any information that cannot be obtained by using “reasonable efforts”.<sup>54</sup>

The frequency of the synthesis and domain reports is good and will ensure that there is up to date data available. However, there are some issues with these reports. Firstly, the inclusion of 'economic benefits' without any mention of the associated costs seems to indicate a desire to, if not hide, then at least not promote, the costs to the environment that result from human activities. This will mean that the reports will contain a less than comprehensive analysis of the cause and effect relationship.<sup>55</sup> Secondly, the national or international standards against which the state of the environment will be measured against are not defined. Picking a standard to be measured

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<sup>52</sup> ERB clause 7.

<sup>53</sup> ERB clause 10(1).

<sup>54</sup> ERB clause 7(3) and 10(3).

<sup>55</sup> Environmental Defence Society “Submission to the Local Government and Environment Committee on the Environmental Reporting Bill 2014” at [2].

against is a matter of policy,<sup>56</sup> and without any applicable New Zealand standards, the risk is that the government of the day could pick and choose whatever national or international standards they wanted. It is worth noting that the reason the creation of national environmental standards has been delayed has been because there is “insufficient data to convince people such standards are required.”<sup>57</sup> Finally, with regards to “reasonable efforts” to obtain the information that will be used, it is of concern that the obtain ability of that information may prejudice the reports.<sup>58</sup> If there are gaps in the information available, they should be identified.

#### *B Topics to be covered in the reports*

Clause 18 provides that the Minister for the Environment and the Minister of Statistics will create regulations that provide for the topics which will be covered by both the synthesis and domain reports, after consultation with the Secretary and the Government Statistician. Because the Ministers have the discretion to determine what topics will be reported on, the credibility and independence of the reports will immediately be called into question, especially when the 'domains' are so broad; marine could cover biodiversity, mineral, oil and gas exploitation, fisheries, marine use change and ocean acidification. This use of extensive regulation by Ministers of the government to prescribe the content of environmental reports politicises the reporting process,<sup>59</sup> and is a significant constitutional issue:<sup>60</sup>

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<sup>56</sup> Local Government New Zealand “Submission to the Local Government and Environment Committee on the Environmental Reporting Bill 2014” at [5].

<sup>57</sup> OECD above n 46 at 172.

<sup>58</sup> Environmental Defence Society, above n 55, at [27].

<sup>59</sup> Above, at 3.

<sup>60</sup> Fish and Game, above n 47, at 9.

The topics to be reported on go to the heart of the Bill. They do not fall into the category of being peripheral matters or minor administrative details. The choice of topics is critical to the information that will be reported on. For example, the Bill requires that the reports must cover the state of freshwater. Potential topics could include: Is freshwater safe for drinking by humans and animals? Is it safe for swimming? Is it safe for fishing, food gathering and mahinga kai? Is it capable of supporting aquatic life, including trout and salmon? What are the impacts of specific industries on freshwater quality? Allowing Ministers to pick and choose the topics that they want to see reported upon allows the Government of the day to significantly shape the way in which the state of New Zealand's environment will be described.

There is no justification for placing such central elements of the ERB in to delegated legislation; the definitions of topics are required to ensure that the core aims of the ERB are accomplished, and as such are a matter for parliament to legislate. Having the topics defined by Ministers will ensure that the executive Government will be able to protect itself from the political consequences of bad environmental policy.

Additionally, as the Environmental Defence Society noted in its submission on the ERB, the environment is in a constant state of change, not just due to the impact that humans are having. Seasonal changes, the introduction of unwanted species and the issues of climate change will cause different issues to become more important. Mandating topics through regulation removes the necessary flexibility to report on what is important both now and in the future.

*C      The non-disclosure clause*

The most major problem with the ERB is contained in clause 16; “the non-disclosure clause”. This clause will have a large impact upon freedom of information and transparency, because it provides that all information gathered and used in the creation of the state of the environment reports remains secret, unable to be disclosed without the consent of the Secretary and Government Statistician;

**16 Disclosure of information**

(1) If any person involved in producing or publishing environmental reports receives a request for disclosure of information or analysis that will be, or has been, used in an environmental report to be published, that person must refer the request to the Secretary and the Government Statistician.

(2) The Secretary and the Government Statistician may, in response to a request referred to them under subsection (1), order that the information or analysis not be disclosed if they are of the opinion that—

(a) disclosure of the information or analysis would compromise the independence of the report; or

(b) the information or analysis is integral to significant findings or conclusions of the report.

(3) Information or analysis must not be disclosed without the consent of both the Secretary and the Government Statistician.

(4) This section applies despite any other enactment.

As seen from the ERB; this non-disclosure provision applies regardless and could therefore override the Official Information Act, the Environment Act 1986, the Ombudsmen Act 1975 and the Public Audit Act 2001. Each of these Acts has a provision within it that provides powers to require information be provided. Because clause 16 applies “to any person”, the effect of the clause will be to prevent the PCE from completing their role as an independent auditor of environmental reports under clause 17 of the ERB, and the obligations of the PCE under the Environment Act 1986.<sup>61</sup> The PCE, the Ombudsmen and the Auditor –General are all Offices of Parliament that have some kind of auditing function. The restriction of their powers to gather information does serious damage to the democratic ideal of transparency.

Admittedly, and non-disclosure clause is necessary in order to ensure that the collection of data from corporations and companies of their commercially sensitive information, and information that may be subject to intellectual property, can be done. However, this clause is by far too wide to accomplish either the stated purpose of the clause to protect the ‘independence’ of the reports, or to protect commercially sensitive information.

Cabinet papers released by the Minister for the Environment indicate that the intention behind clause 16 was to ensure that no-one, being mainly Ministers, have access to the reports or the data contained within them before they are released; in order to ensure that the reports are independent from the government prior to the reports' release.<sup>62</sup> However, the clause does not

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<sup>61</sup> Environment Act 1986, s 19.

<sup>62</sup> Cabinet Economic Growth and Infrastructure Committee “Environmental Reporting Bill” (31 July 2013) 12(13)138 at [7] (Obtained under Official

allow for the release of any information, to any person, at any point, without consent. The Cabinet paper does however provide that Ministers will have access to those reports prior to release should they be needed for evidence based policy development.<sup>63</sup>

Firstly, the term “environmental reports” could be extended from national state of the environment reports to cover all environmental reports that contain data which will be, or has been used. This could mean that both regional councils and scientists collecting environmental data may lose control over that data, and will be bound to keep secret their reports, resulting in less information contributed to the scientific community and a less well informed public, and will have an impact upon the reporting obligation of regional councils under section 35 of the RMA. This is particularly concerning with regard to the synthesis reports. The three year time frame could mean that other environmental reports may not be released in a timely manner.

Finally, this clause introduces at least the perception of interference by the government with the reports, making it less likely that any report created will be considered credible, because outside auditing will not be able to be carried out without permission.

The only way independence and absence of bias can be established is with all data and analysis to be readily available to the public at large. This way, outside analysis of the data can be run, which will show that the reports are either accurate, or that they have been influenced by something else.

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Information Act 1982 Request to the Ministry for the Environment).

<sup>63</sup> Ibid.



#### *D The role of the Parliamentary Commissioner for the Environment*

The ERB confirms the PCE's statutory duties under the Environment Act 1986 in clause 17 of the ERB.<sup>64</sup> While the inclusion of the PCE in the Bill is a nice gesture, clause 17 does nothing to add to the PCE's independent oversight of both the reporting process and the reports themselves. With the major increase in the amount of reporting that the ERB seeks to institute, the PCE will need to be better funded to ensure that the PCE has the ability to provide that oversight.

#### *VIII Recommendations*

Some have argued that the PCE is the best body to take responsibility for national environmental reports, as the PCE is an independent environmental auditor. However, the Minister for the Environment views the PCE to be without the necessary technical capacity to evaluate broad economic, social and cultural aspects of the reports and the PCE herself said that the PCE is without the technical capacity to carry out robust national environmental reporting – primarily due to the size of the PCE staff. The author believes that the PCE has an important role as an independent auditor, who will be able to provide commentary on the independence and accuracy of the reports that are released by the Ministry for the Environment under the ERB. It has been noted that there needs to be good links between the reporting body and the body that develops policy to ensure that the environmental assessment is properly used in policy development.<sup>65</sup> Therefore, it is the recommendation of the author that the SOER be produced and

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<sup>64</sup> Environment Act 1986, section 16.

<sup>65</sup> EEA, above n 1.

published by the Environmental Protection Agency (EPA). The EPA is a body that is independent from the executive Government, but has enough of a connection to the executive that there will be good links between the EPA and the Ministries.

The appearance of influence will do almost as much damage to the credibility of national state of the environment reports as actual influence. In order for the ERB to truly provide national state of the environment reports which are accurate and independent, clause 16 of the ERB should be entirely removed. If this is not amenable, however, clause 16 should be amended to cover Ministers only, with the established processes of the Official Information Act and the Statistics Act applying.

If the purpose of this clause is truly to protect the independence of these reports, the Offices of the Parliament that have been created in order to provide auditing of the New Zealand system should have access to the environmental information. If the government simply does not want the information contained within the reports to be released to the public at large before it has been released by the government, then clause 16 should be amended to provide for this. This way, the PCE, Auditor-General and Ombudsmen will all be able to continue their functions as independent evaluators.

Another necessary change regards clause 18, which covers the regulations that the Minister for the Environment and the (Statistician) will make. Allowing the Ministers to set the topics that will be covered by the report introduces opportunity, and the perception, of influence. The Environmental Defence Society, Forest and Bird in their submissions on the ERB say that setting the topics for the reports is a job that is better suited to the PCE. The PCE and Fish and Game both state that defining the topics is a job that needs to be done by Parliament.

The author believes recommends that the topics be defined in a broad way by Parliament and included in the Bill, after receiving advice from independent experts on what topics should be included. The further that the executive Government is removed from prescribing the topics to be covered, the more independent the reports will be.

In terms of the indicators that will be used to illustrate the state of the environment through the topics, these should be developed in consultation with the EPA, the PCE and the Government Statistician. They are the bodies that will have the technical knowledge and understanding of environmental data to ensure that the indicators are representative and paint an accurate picture.

While the PCE is provided a role in clause 17 the ERB, that role is the one that was already created by the Environment Act 1986.<sup>66</sup> The inclusion of the PCE in the ERB is more like 'window dressing' than providing for the independent oversight of both the reporting process and the reports themselves.

Changes also need to be made to ensure that the reporting body has the statutory power to require the provision of information. As discussed above, the amount of information required to produce an accurate analysis of the state of the environment is massive. A duty to comply with requests for information will be of great assistance to those who have to find and analyse the data needed.

Finally, the framework the Ministry for the Environment intends to use in the SOER should be scrapped; and the much more comprehensive Driver – Pressure – State – Impact – Response

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<sup>66</sup> Environment Act 1986, section 16.

framework used. As noted above, the current New Zealand framework will not provide any evaluation of the policies developed and instituted by the executive Government to the New Zealand public, which demonstrates a lack of transparency and a fear of political consequences of the current environmental policy. An integrated framework that attempts to demonstrate the interconnected nature of the human-environment relationship is the

## *IX Conclusion*

Reports on the state of the environment are important to any nation that wishes to ensure that its social, economic and environmental policies are appropriate to the actual state of the environment. SOER have developed over time to focus on the relationships between human development and growth and the corresponding impact those have on the natural environment. A good SOER will not only focus on the cause and effect relationship, but will also look at the impacts the changing environment has on human health and well being, as well as providing an evaluation of society's responses to this change in state. One of the best frameworks that can be used for state of the environment reporting that accomplishes this comprehensive analysis is the Driver – Pressure – State – Impact – Response framework.

New Zealand has some of the best integrated development and environmental legislation in the world in the form of the Resource Management Act. However, there is simply not enough easily accessible and trustworthy information on the national state of the New Zealand environment to enable good decision making on the environment and sustainable

development at a national scale.

A regularly mandated report on the current state of the environment is a very important step forward in not only ensuring the New Zealand public is well informed, but it will also ensure that Government policy that is developed is evidence based. National state of the environment reports will feed into the choices that people make in their daily lives; it will influence attitudes, behaviour and even voting in a time when environmental concerns are more and more important and becoming more mainstream.

The Environmental Reporting Bill (ERB) is a step in the right direction, but more work is necessary to ensure that is in line with its stated purpose. In order to ensure that the ERB is the best possible ERB it can be it will require firstly that Parliament decides on what topics should be reported on instead of Ministers, secondly the removal (or severe limitation) of the non-disclosure clause, the statutory ability to require the provision of information and a more comprehensive framework for use in the state of the environment reports. It will be interesting to see the recommendations of the Local Government and Environment Committee once it has considered all of the information. Hopefully New Zealand will receive the Environmental Reporting Bill it needs and deserves.