

# Departmental Disclosure Statement

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Environmental Reporting Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

16 December 2013.

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## Part One: General Policy Statement

### Environmental Reporting Bill

The purpose of this Bill is to create a national-level environmental reporting system which ensures that reporting on our environment occurs on a regular basis and can be trusted by the public as independent, fair, and accurate.

The consolidated *State of Environment* reports published by the Ministry for the Environment (the **Ministry**) in 1997 and 2007 were discretionary outputs for the Ministry, and were approved for release by the Minister for the Environment (the **Minister**). The current system of environmental reporting involves periodic release of updates by the Ministry on 22 indicators. The timing of the indicator updates is determined by data availability and rate of change, with some indicators updated annually and others less frequently, at the discretion of the Ministry and the Minister.

The Government's objective is to have a legislative basis for independent environmental reporting in order to give the public certainty about the scope, timing, and quality of the information they will receive about the environment. The Bill will require the Secretary for the Environment and the Government Statistician to publish a domain report on one of 5 environmental domains (air, atmosphere and climate, freshwater, land, and marine) every 6 months and publish a synthesis report (providing an analysis of cross-domain trends and interactions) once every 3 years.

Reporting will be required to give a fair and accurate representation of the state of New Zealand's environment as a whole, or the state of the domain being reported on. Reporting will draw on the expertise of the Ministry and Statistics New Zealand to ensure high standards of statistical integrity and robustness. Reports will give New Zealanders the information they need to understand the condition of their environment, why it is like that, and what that means.

The Bill focuses on reporting the best available data and does not include any requirement to generate information that is not currently collected. Over time, it is likely to drive improvements in future monitoring and data collection by setting out the topics reporting should cover, in alignment with international practice. Reports will include information on the biophysical state of a domain, trends over time, pressures driving changes in the state, and the impacts of changes in the state on:

- ecosystem integrity:
- public health:
- economic benefits derived from utilising natural resources:
- culture and recreation.

The regulation-empowering provision will require that topics to be reported on be selected on the basis of significance, statistical rigour and evidence of strong connection to an environmental state.

A key element of the new environmental reporting system is independence from the government of the day. This is achieved through providing key roles for the Minister, the Minister of Statistics, the Government Statistician, and the Parliamentary Commissioner for the Environment:

- The Minister and the Minister of Statistics will be responsible for recommending regulations that set out topics to be reported on, following consultation with the

Government Statistician and the Parliamentary Commissioner for the Environment.

- The Government Statistician, after consulting the Secretary for the Environment, must determine the statistics to be used to measure 1 or more aspects of each topic as set out in regulations, and must ensure that the statistics chosen accurately represent the relevant topic.
- The Government Statistician has sole responsibility for determining procedures and methods to be used in providing statistics that will be included in the environmental reports.
- The Secretary for the Environment and the Government Statistician will be responsible for reporting at arm's length from the government, and ensuring reports are fair and accurate.
- The Parliamentary Commissioner for the Environment will provide independent commentary at his or her discretion.

The responsibilities of the Government Statistician under this Bill are not intended to limit or affect the independence of the Government Statistician when exercising or performing his or her powers, duties, or functions under the Statistics Act 1975.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<p><b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b></p>	<p><b>YES</b></p>
<p>Following the release of their last comprehensive report on the state of the environment, the Ministry for the Environment commissioned an independent review to obtain stakeholder feedback on the readability, content and overall usefulness of the Environment New Zealand 2007 report (accessible at <a href="http://www.mfe.govt.nz/publications/ser/review-enviroz07_report/index.html">http://www.mfe.govt.nz/publications/ser/review-enviroz07_report/index.html</a>). This review was useful in determining the need for revised scope, timing, and regularity of environmental reporting.</p> <p>In 2009, Statistics NZ issued their Framework for Measuring Sustainable Development (accessible at <a href="http://www.stats.govt.nz/browse_for_stats/environment/sustainable_development/framework-measuring-sustainable-development.aspx">http://www.stats.govt.nz/browse_for_stats/environment/sustainable_development/framework-measuring-sustainable-development.aspx</a>). This document utilises the concept of sustainable development and provides a basis for selecting indicators to measure progress towards sustainable development. These indicators informed three target dimensions of sustainable development, namely environmental responsibility, economic efficiency and social cohesion. The Framework used for the Sustainable Development Report has contributed to the future development of the environmental reporting framework.</p> <p>In 2010, the Parliamentary Commissioner for the Environment released “How clean is New Zealand?” (accessible at <a href="http://www.pce.parliament.nz/assets/Uploads/How-clean-is-New-Zealand.pdf">http://www.pce.parliament.nz/assets/Uploads/How-clean-is-New-Zealand.pdf</a>). This detailed report included recommendations for improvements to environmental reporting in New Zealand, many of which are reflected in the policy behind the Bill and the environmental reporting framework it supports.</p> <p>In 2011, The Ministry for the Environment released ‘Measuring Up: Environmental Reporting – A Discussion Document’ (accessible at <a href="http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/measuring-up-environmental-reporting.pdf">http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/measuring-up-environmental-reporting.pdf</a>). This document sought input and views on the proposed options for improving national “state-of-the–environment” reporting.</p> <p>In 2012, as part of the Environment Domain Plan, Statistics NZ, the Ministry for the Environment (MfE) and the Department of Conservation (DOC) undertook a stocktake of national environmental information. This included extensive consultation with central and local government, Māori, Business and NGO’s across the natural resource sector. In addition to providing an overview of existing national statistics the consultation process also identified enduring environmental questions for 10 environmental topic areas (accessible at <a href="http://www.stats.govt.nz/browse_for_stats/environment/natural_resources/environment-domain-plan-stocktake-paper.aspx">http://www.stats.govt.nz/browse_for_stats/environment/natural_resources/environment-domain-plan-stocktake-paper.aspx</a>).</p> <p>The completed Environment Domain Plan 2013 was released by Statistics NZ, MfE and DOC in July 2013 (accessible at <a href="http://www.stats.govt.nz/browse_for_stats/environment/natural_resources/environment-domain-plan.aspx">http://www.stats.govt.nz/browse_for_stats/environment/natural_resources/environment-domain-plan.aspx</a>).</p>	

## Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The regulatory impact analysis requirements do not apply to this Bill as it will have no or only minor impacts on businesses, individuals or not-for-profit organisations.	

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Improved access to consistent, high quality information on New Zealand's environmental performance is expected to assist businesses in marketing their products and services overseas. This type of information is also likely to be important to maintaining New Zealand's brand in the longer term. The scale of these benefits has not been quantified.</p> <p>No cost to businesses, individuals or not-for-profit organisations is anticipated as a result of this Bill. Direct costs associated with the new environmental reporting framework will be managed within existing departmental baselines. Indirect costs to central government and regional councils &amp; unitary authorities are likely in order to improve the quality and range of data available for reporting. Funding options for these costs will be considered through the Budget process.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>

The legislation neither creates new obligations or standards for data providers, nor impacts significantly on existing obligations or standards. Most compliance with changes to reporting requirements will be achieved by amending commercial contracts (e.g. with Crown Research Institutes) for data collection, and by negotiated agreement with regional councils & unitary authorities who already collect and report environmental data. The Minister for the Environment is empowered to require Councils to supply specific environmental data under Section 360 of the Resource Management Act, and this provision is expected to help ensure compliance to a high level is achieved.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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New Zealand is party to a number of multilateral environmental agreements, many of which include reporting requirements. This Bill is not intended to give effect to those reporting obligations. Reporting mandated by specific agreements will continue to be provided in accordance with and tailored to the specific requirements in each individual agreement.

The reporting mandated through this Bill is, however, designed to be consistent with OECD reporting standards, and has been tested with the OECD. This will enable it to be drawn on by the OECD for the purposes of benchmarking and cross-country reporting.

The Ministry of Foreign Affairs and Trade has been consulted on this statement.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Te Puni Kokiri (TPK) has been consulted throughout the development of the Bill and an iwi representative included in the project's senior advisory group.

In addition, the Environmental Reporting Bill has been informed by extensive work by Statistics NZ, the Ministry for the Environment and the Department of Conservation in creating the Environmental Domain Plan 2013. In developing the EDP officials consulted experts on Māori environmental statistics, both within government (MfE and TPK), and iwi (e.g. Kaumatua from Northland, researchers from Otago). The results of Environment Domain Plan were presented to the Māori Statistical Advisory committee.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	
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YES

Advice provided to the Attorney-General by the Ministry of Justice, or a Section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website (accessible at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>).



## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Initial public consultation on the Bill was carried out in 2011, with the release of the discussion document 'Measuring up: Environmental reporting' (accessible at <a href="http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/measuring-up-environmental-reporting.pdf">http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/measuring-up-environmental-reporting.pdf</a>).</p> <p>This document sought public feedback on the proposed options for improving national state of the environment reporting in terms of roles and responsibilities, scope, and underlying data quality. 76 submissions were received. Summary of submissions: (accessible at <a href="http://www.mfe.govt.nz/environmental-reporting/about-environmental-reporting/submissions/summary-of-submissions.pdf">http://www.mfe.govt.nz/environmental-reporting/about-environmental-reporting/submissions/summary-of-submissions.pdf</a>).</p> <p>As part of the policy development underpinning the Bill the following agencies and organisations were consulted: Statistics NZ, the Treasury, the Ministry for Business, Innovation and Employment, the Ministry for Primary Industries, the Department of Conservation, Land Information New Zealand, the Ministry of Health, the Ministry of Transport, the Ministry of Justice, Te Puni Kokiri, regional council representatives, the Sustainable Business Council, and Landcare Research. The Department of Prime Minister and Cabinet was informed. This same group, with the exception of the Sustainable Business Council and regional council representatives, and the addition of the Ministry of Foreign Affairs and Trade and the Office of Treaty Settlements was consulted on a near-final draft of the Bill in late November 2013.</p> <p>The Parliamentary Commissioner for the Environment (PCE) has also been consulted on the policy to be given effect by this Bill.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The proposals have been tested through the consultation detailed in answer 3.6 (above). In addition, the policy behind the Environmental Reporting Bill has been assessed by reference to practice in other jurisdictions, and in other sectors in New</p>	

Zealand.

- Workability has been tested with organisations likely to be involved in the provision of monitoring data (e.g. regional councils and Crown research institutes) and reporting (Statistics N.Z.)

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>This Bill enables regulations to be made to set out the topics to be reported on under each environmental domain. The regulations will be made on the joint advice of the Minister for the Environment and the Minister of Statistics in consultation with the Government Statistician and the Parliamentary Commissioner for the Environment (Clause 18(3) of the Bill).</p> <p>Regulations are necessary because rules for environmental reporting on changing environment, measurement techniques and priorities require flexibility. Regulations are a practical and appropriate means to allow the environmental framework to evolve and adapt, while remaining restrained within the strict confines established by primary legislation.</p>	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
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Two features are worth noting in terms of the interaction of the Environmental Reporting Bill with other legislation.

#### **Disclosure of information**

Any request that is received for disclosure of information, for example a request under the Official Information Act 1982 for analysis that will be or has been used in any environmental report to be published, will be referred to the Government Statistician and the Secretary for the Environment (Clause 16 of the Bill). The Government Statistician and the Secretary will have a discretionary ability to withhold information if they are of the opinion that:

- disclosure of the information or analysis would compromise the independence of the report; or
- The information or analysis is integral to significant findings or conclusions of the report.

This will ensure that a core component of the Bill is achieved, that environmental reporting will be independent from the Government of the day.

This approach is consistent with current practice for Tier 1 statistics (e.g. gross domestic product statistics) and covers requests from any person including Ministers, or the Parliamentary Commissioner for the Environment.

The Parliamentary Commissioner will play an important role in environmental reporting including, at her discretion, commentary on reports once they are published.

#### **Role of the Government Statistician under the environmental reporting regime**

The Bill and associated regulations set out the high level framework for Environmental Reporting, and draws on the expertise of the Government Statistician by:

- a requirement that Ministers consult with the Government Statistician and the Parliamentary Commissioner for the Environment when making regulations specifying the topics for environmental reporting (Clause 18 (3) of the Bill)
- giving the Government Statistician final responsibility for deciding what statistics will be used for the report (Clause 13 (2) of the Bill)
- giving the Government Statistician sole responsibility for deciding the procedures and methods to be used in providing any statistics that will be included in any environmental report (Clause 13 (4) of the Bill).

These provisions provide the Government Statistician independence in relation to the environmental reporting process under the Bill.

Nothing in the Environmental Reporting Bill affects the Government Statistician's ability to report on whatever he or she chooses under the Statistics Act 1975 including any environmental statistics.