



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

ENVIRONMENTAL REPORTING BILL

16/04/2014

SUBMISSION ON THE ENVIRONMENTAL REPORTING BILL

Introduction

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Environmental Reporting Bill (Bill).
2. The purposes of the Bill are set out in clause 3.
3. The Law Society has concerns that those purposes will not be achieved.
4. This submission recommends a number of amendments to the Bill to better achieve its purposes.

Synthesis Reports

5. Clause 3(a) states that one of the purposes of the Environmental Reporting Act (Act) is to require regular reports on the state of New Zealand's environment as a whole.
6. Clause 6 provides for the Chief Executive of the Ministry for the Environment (the Secretary) and the Government Statistician to publish a synthesis report once every three years. Synthesis reports are an important part of the reporting system established to achieve the purposes of the Act.
7. However, regulations are to be made describing the topics to be covered in a synthesis report.
8. This regulation-making power is conferred in clause 18(1)(a).
9. Clause 7(1) makes it clear that a synthesis report must relate to the topics prescribed by regulations.
10. There are potentially two problems with this approach.
11. First, the power to make regulations setting topics for a synthesis report is effectively held by the government of the day. There is an ability to limit, by definition of topics, the scope of the report and avoid topics which are contentious or politically inconvenient.
12. Secondly, there is an apparent contradiction between requiring reports on the state of New Zealand's environment as a whole but confining the content of such reports to topics prescribed by regulation.

13. It is far from clear that “topics” are really necessary. The statutory mandate to report on the state of the environment as a whole and cover the matters set out in clause 7(1)(a), (b) and (c) and clause 7(2) seems sufficient.

Recommendation

14. Remove the provision for topics in clauses 7(1), 12(a), 12(b), 13(2) and 13(3) and the regulation-making power in clause 18.
15. If it is felt necessary to have “topics”, then the topics should be specified in the legislation itself.

Domain Reports

16. Clause 3(b) states that one of the purposes of the Act is to require regular reports on the state of the air, atmosphere and climate, freshwater, land and marine domains.
17. Clause 9 contains the obligation of the Secretary and the Government Statistician to publish domain reports.
18. Clause 10 describes the contents of domain reports, but confines the scope of such reports to the topics prescribed by regulations.
19. Similar issues arise in relation to topics for domain reports, as is discussed in the previous section on synthesis reports.
20. There are five domains, each to be reported on once every three years. Domain reports feed into the synthesis report. If domain reports are limited to or by topics, there will not be a fair and accurate report on the domain and the groundwork for assessing the state of the environment as a whole in a synthesis report may be deficient.
21. For these reasons, references to “topics” should be removed.

Recommendation

22. Remove the reference to topics in clauses 10(1), 12(a), 12(b), 13(2) and 13(3) and the regulation-making power in clause 18.

Independence

23. Clause 3(c) states one of the purposes of the Act is to ensure that producers of environmental reports act independently.
24. That is desirable.

25. The regulation-making power enables Ministers to set the agenda by determining the topics to be reported on. This regulation-making power has the ability to undermine the independence and integrity of environmental reports published under the Bill.

Recommendation

26. Remove the regulation-making power in clause 18.

Fairness and accuracy

27. Clause 3(c) states one of the purposes of the Act is that fair and accurate environmental reports are produced.
28. There must be doubt about whether the legislative framework proposed in the Bill will ensure the production of fair and accurate reports.
29. There is no provision expressly enabling the Secretary or the Government Statistician to undertake or commission research. It is desirable to expressly confer such powers.
30. Secondly, neither the Secretary nor the Government Statistician is given any powers to acquire or compel the provision of information.
31. Ironically, clause 3(d) states that the purpose of the Act is to ensure the expertise of government departments is used in producing environmental reports.
32. That too is desirable. However, apart from the direct involvement of the Ministry for the Environment and Statistics New Zealand, there is nothing in the Bill which ensures the expertise of other government departments is utilised in the compilation of environmental reports.
33. Many ministries and departments will hold information pertinent to the reports required by the Bill. It is essential in achieving the purpose of the Bill that their knowledge and their expertise is utilised.
34. Relevant information will also be held by Crown entities and local authorities.
35. There should be a power to require information from any ministry, government department, Crown entity or local authority, and a corresponding obligation to supply information requested.

Recommendations

36. Include power for the Secretary and Government Statistician to undertake or commission research.

37. Include powers for the Secretary and Government Statistician to require ministries, government departments, Crown entities and local authorities to provide information for the purposes of the Bill.
38. Include power for the Secretary and Government Statistician to require the information to be provided in a specified form and manner.
39. Include corresponding obligations to supply information when requested.

Standards

40. Clauses 7(2) and 10(2) require reports to measure the environment as a whole and each domain against national or international standards.
41. There is no definition of relevant national or international standards in the Bill. This is a potential shortcoming.
42. On the other hand, standards are subject to review, revision and replacement. The specification of standards in the legislation itself may well be unwieldy, impractical and ineffective.
43. A transparent and robust process for determining relevant standards should be prescribed.

Recommendation

44. It is suggested that the Secretary and Government Statistician jointly propose standards against which they intend to measure each domain and the state of New Zealand's environment as a whole; and that their proposal be open for public consultation for a specified period, after which the two officials will confirm, amend or withdraw the standards to be used.

Timing – clause 8(2)

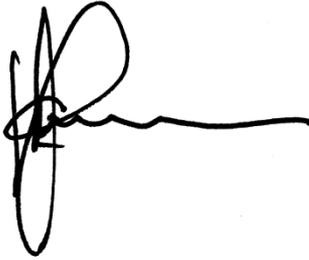
45. This clause requires the first synthesis report to be published by 30 June 2015.
46. While the Law Society agrees that the environmental reporting should take place, timeframes must be realistic.
47. The deadline will be less than 12 months after the Bill is likely to be enacted.
48. Unless work towards such a report is now well advanced, it seems unlikely that the deadline will be met. Failure to do so would damage the credibility of the environmental reporting process established by the Bill.

Recommendation

49. Ensure that the timeframe for publication of the first synthesis report can be met.

Conclusion

17. The Law Society does not wish to appear in support of this submission.

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Chris Moore
President
16 April 2014