

Annex to Regulatory Impact Statement: Amendments to the Environmental Reporting Act 2015

Purpose of Document

Decision sought:	Cabinet approval to include long-term environmental outcomes in the agreed package of amendments to the Environmental Reporting Act 2015
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon James Shaw, Associate Minister for the Environment (Biodiversity/Minister with delegated responsibilities for amendments to the Environmental Reporting Act 2015) Endorsed by Hon David Parker, Minister for the Environment
Date finalised:	16 November 2022

Background

This is an Annex to the *Regulatory Impact Statement: Amendments to the Environmental Reporting Act 2015*. The Regulatory Impact Statement (RIS) for the package of amendments to the Environmental Reporting Act 2015 (ERA) was agreed by Cabinet Environment, Energy and Climate Committee (ENV) on 28 July 2022 and by Cabinet on 1 August 2022. Drafting instructions were issued to the Parliamentary Counsel Office (PCO) on 23 August 2022 and the Ministry for the Environment (the Ministry) was notified that the PCO would begin drafting the Environmental Reporting Amendment Bill (Bill) in late October 2022.

In October 2022, the Parliamentary Commissioner for the Environment (PCE) published his report, *Environmental reporting, research and investment: Do we know if we're making a difference?* The report focuses on how Government can make further improvements to environmental management and public accountability. He recommends that environmental outcomes prioritised by the Government of the day be linked to long-term, overarching environmental outcomes (outcomes) that are specified in legislation and that he considers the ERA to be the most appropriate place for this.

The PCE proposed six outcomes:

1. Improving land and freshwater (including sustainable management of resources)
2. Improving biodiversity and ecosystem functioning and resilience
3. Improving coastal and marine environment (including sustainable management of resources)
4. Reducing greenhouse gas emissions
5. Reducing pollution and waste
6. Improving the efficiency and effectiveness of institutions designed to manage human interventions in the environment.

The recommendation to include outcomes in the ERA has also been raised through:

- Several of the submissions received on the proposed amendments from targeted consultation which suggested that environmental reporting be required to:
 - include specific national policy objectives and outcomes
 - identify gaps in environmental performance
 - develop action plans to solve specific environmental problems
 - create greater accountability for actions.
- The Ministry's Science Advisory Panel's (SAP) report, *The Future of Environmental Reporting in Aotearoa*, was released in October 2022. The report explores how to ensure Aotearoa leverages opportunities provided by the ERA amendments.

The SAP proposed that environmental reporting be designed to track progress towards clearly stated, visible national environmental outcomes, in order to make good environmental decisions.¹ The report states that without such high-level strategic outcomes, Aotearoa cannot quantify progress towards them, nor demonstrate how Aotearoa is contributing to global goals (if appropriate).²

This Annex covers the additional policy which is not included in the main RIS. The proposed additional policy will result in new drafting instructions being issued to the PCO to include outcomes within the existing package of amendments to the ERA, but will not significantly alter the Bill's timeline. The Bill is expected to pass into legislation in 2023.

Analysis and engagement

Three options were identified:

Option 1: Status quo.

No changes would be made to the proposed amendments to the ERA. Reporting would not be enhanced as much as it could be as there would be no requirement to address whether the environment is declining, stable or improving. Government response would not be required to report on relevant outcomes. Reporting could still address outcomes, however, these would not be outcomes set in legislation so may change over time. This could create inconsistency in national level environmental reporting. It is important that reporting remains consistent over time to enable a clear picture of environmental change.

Option 2: Include outcomes within the ERA as recommended by the PCE.

The PCE's recommendation to include six outcomes (as listed above) has been evaluated. The reasons for not proceeding with this option are:

- the sixth outcome recommended by the PCE of 'improving the efficiency and effectiveness of institutions designed to manage human interventions in the environment' is not sufficiently focused on environmental reporting. It does not easily align with the cross-domain themes and may create duplication with the cross-system oversight, performance and monitoring functions under the Resource Management (RM) reforms

¹ Secretary for the Environment's Science Advisory Panel. October 2022. The future of environmental reporting in Aotearoa. Page 4.

² Ibid, page 7.

- the wording 'including sustainable management of resources' was removed from outcomes 1 and 3 in the final proposed outcomes (see Table 2) following concerns raised in departmental consultation that this narrowed the scope of the outcomes. The intent of this wording is already covered in the definitions of the corresponding themes issued in the drafting instructions. For example, the definition of 'coastal and marine use' includes recreational fishing and commercial fisheries, tourism and outdoor activities (boating, surfing etc). Further, the wording 'sustainable management' aligns with the Resource Management Act 1991 but does not align with proposals under the Natural and Built Environment Act and broader RM reforms
- the Ministry could still explore ways of fulfilling the intent of the sixth outcome in the broader language of the ERA through working with the PCO.

Option 3: Adopt the PCE's recommendation to include outcomes but modify the wording based on feedback from departmental consultation, and align them with other environmental reforms.

The Ministry's analysis of Option 2, together with feedback from other government agencies, indicated that a third option needed to be developed. The Ministry consulted with broader environmental policy programmes and with other relevant government departments. Overall, those consulted were supportive of outcomes being included in the ERA. However, several adjustments were made to the final policy proposal to ensure alignment across broader environmental goals.

Option 3 is a logical extension of the cross-domain themes (see paragraphs 94-102 of the RIS³ for the reasons for moving to cross-domain themes and how they focus the reporting) as they can reasonably and non-controversially be assumed to underlie the cross-domain themes. As they:

- directly link to the purpose statement by strengthening the 'how'
- closely relate to the government response mechanism ensuring that actions are aligned with desired outcomes
- relate to core environmental indicators as indicators will provide the data and evidence to measure progress towards outcomes, and outcomes will inform the development of indicators
- align with the language and intent of broader environmental policy, particularly the resource management reforms.

All options were assessed against the criteria used in the RIS for the other proposed amendments to the ERA. The assessment is set out in Table 1.

³ See *Regulatory Impact Statement: Amendments to the Environmental Reporting Act 2015* here: <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-amendments-environmental-reporting-act-2015>

Table 1: Options assessment against criteria

Proposal: include long-term environmental outcomes					
Options considered	Effective	Certain	Independent	Cost efficient	Score
Option 1: Status quo	xx	xx	✓✓	✓	-1
Option 2: Include outcomes within the ERA as recommended by the PCE	✓✓	✓✓	✓	✓	6
Option 3: Adopt the PCE's recommendation to include outcomes but modify the wording based on feedback from departmental consultation, and align them with other environmental reforms.	✓✓	✓✓	✓✓	✓✓	8

Table key

✓✓ fully meets criteria

✓ partially meets criteria

~ Neutral

x partially does not meet criteria

xx does not meet criteria

The lower score for option 2 is based on:

- the lower level of independence that is likely if the analysis involves examining the efficiency and effectiveness of institutions designed to manage human interventions in the environment
- the higher costs involved in extending the analysis to evaluating the effectiveness of institutions.

Option 3 is the preferred option. This addition to the package of amendments to establish a set of outcomes will create greater public accountability and enduring environmental responsibility. It will also create links within reports between the issues identified within a cross-domain theme or themes, actions undertaken by the government in response to those issues, and how these actions relate to desired outcomes.

The proposed final outcomes, following consultation are set out in Table 2 below:

Table 2: Final proposed outcomes

Cross-domain themes	Final proposed outcomes
Land and freshwater use	1. Improving land and freshwater.
Ecosystems and biodiversity	2. Improving biodiversity and ecosystem functioning and resilience.
Coastal and marine use	3. Improving coastal and marine environment.
Climate change and climate variability	4. Reducing greenhouse gas emissions.
Pollution and waste	5. Reducing pollution and waste.

The proposed additional policy

This policy proposal would result in two additional amendments to the package of amendments to the ERA 1) further clarifying the purpose statement and 2) specifying outcomes.

1. *Clarifying the purpose*

The new purpose statement clearly states the 'why' and the 'how' of environmental reporting. Cabinet has previously agreed to state a clear purpose for environmental reporting, amending the purpose clause to:

- Require regular reports on New Zealand's environment that will inform New Zealanders on the health of the environment and enable decisions that lead to effective, long-term environmental stewardship and kaitiakitanga by:
 - requiring regular, independent, evidence-based, trusted and reliable state of the environment reporting
 - providing greater alignment with and requiring recognition of te ao Māori, including mātauranga Māori and the values and aspirations of hapū, iwi, and Māori for the environment in environmental reporting
 - supporting flexibility in reporting formats.

Including outcomes would require an additional statement on how environmental reporting will meet its purpose. This could include:

- to inform New Zealanders of progress towards long-term environmental outcomes.

2. *Specifying outcomes*

Specify the outcomes outlined in Table 1.

Note: When drafting the Bill, additional adjustments might be made to other policy proposals to ensure alignment and to factor in the other key considerations mentioned above. These will be addressed with the PCO (eg, adjustments to the Government response mechanism and core environmental indicators may be required to specify their relationship with outcomes).

Further work will also be required to ensure alignment with other significant reform programmes such as resource management reform, Emissions Reduction Plan, and the National Adaptation Plan.

Impact analysis

The impact of including outcomes in the package of ERA amendments will be minimal as they require only minor changes to the already agreed proposals.

Including outcomes will create no additional costs to those already outlined in the RIS (see paragraphs 61-63). The analysis of outcomes will use data and core indicators whose costs are already assessed and included in the Cost Benefit Analysis (CBA) (pages 22–26). Outcomes will be assessed as part of the Government response, whose costs are also assessed in the CBA (see p 15) and RIS (see paragraphs 138-140 and 147-150).

The reporting framework will be more robust with the inclusion of outcomes, by adding a layer to the analysis of environmental data and core indicators. Tracking progress against outcomes will improve public accountability of environmental issues identified in environmental reporting, and how these will be managed by the Government of the day.

Consultation

Departmental and Ministerial consultation occurred in parallel between 27 October and 2 November 2022. The PCE's proposed outcomes were consulted on, although the Ministry noted that it did not think the sixth outcome should be included. One Minister and 13 departments provided feedback on environmental outcomes.

Ministerial interest was related to the impact of this proposal on local government, to which there will be no further impacts than those already identified in the agreed package of amendments.

All 13 departments were supportive of including outcomes but did not support the inclusion of the sixth outcome, 'Improving the efficiency and effectiveness of institutions designed to manage human interventions in the environment'. Departmental feedback also influenced the final set of proposed outcomes set out in Table 1.

The Ministry has not consulted Māori partners, stakeholders or the public on this addition to the amendments given that:

- the inclusion of outcomes can reasonably and non-controversially be assumed to underlie each cross-domain theme given their focus on improving aspects of the environment or reducing human impacts on the environment
- the PCE publicly released his report in October this year which includes his analysis of and recommendation to include outcomes in the ERA
- the legislation will go through the select committee process next year which is likely to include public consultation. The Ministry intends to carry out targeted consultation with Māori partners at this time
- the Ministry will work closely with Treaty partners in planning and implementing the legislation.

Responsible Manager(s) (completed by relevant manager)

Nicola Sole

Manager

System Improvements Team

Ministry for the Environment



16 November 2022

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry for the Environment

Panel Assessment & Comment: The Ministry for the Environment's Regulatory Impact Assessment Panel (Panel) considers that the Regulatory Impact Statement (RIS) document on the agreed package of amendments to the ERA meets the quality assurance criteria for regulatory impact analysis. The additional proposal to include outcomes is to be included as an annex to the RIS following Cabinet agreement of this paper. The Panel has assessed the annex as meeting the quality assurance criteria.