



Submission on the Environment (Disestablishment of Ministry for the Environment) Amendment Bill

SUBMITTER DETAILS

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Introduction

1. The Environmental Defence Society (**EDS**) thanks the Environment Select Committee for the opportunity to make a submission on the Environment (Disestablishment of Ministry for the Environment) Amendment Bill (**Bill**).
2. EDS is an apolitical, not-for-profit organisation dedicated to achieving improved environmental outcomes for all New Zealanders. It is active as a litigator, policy think tank, events convenor and environmental advocate. It has dedicated considerable resource over the past seven years into looking at the future of the resource management system in Aotearoa New Zealand.¹ It has become a leading voice in this space.
3. The Bill provides for the consolidation of the Ministry for the Environment, the Ministry of Housing and Urban Development, the Ministry of Transport, and the local government functions of the Department of Internal Affairs into a new ministry with a broader range of functions.
4. Part of the merger requires legislative change because the Ministry for the Environment is established under the Environment Act 1986. Essentially, the Bill transfers the existing functions of the Ministry for the Environment to the new Secretary for the Environment, who will also be the Chief Executive of the consolidated Ministry of Cities, Environment, Regions and Transport (MCERT).

¹ For a list of EDS's resource management publications see: <https://eds.org.nz/our-work/policy/projects/resource-management-reform/>

Overall view

5. EDS accepts that there is a need for more integrated decision-making across portfolios for planning and environment, transport, local government and housing. However, overall, we consider that the risks of consolidating the statutory environmental functions of the Ministry for the Environment in a much broader, development-oriented ministry, outweigh the potential benefits of integration.
6. Because of the broader institutional context in which this legislation is being progressed, we therefore oppose the Bill. Our view is that integration, while important, can be achieved in better ways, including through the use of Inter-departmental boards under the Public Service Act.
7. There is also a considerable risk of institutional disruption at the very time where stability is required. The Ministry for the Environment is crucial for effective implementation of the new resource management system (under the Natural Environment Bill and Planning Bill). Fundamental institutional overhaul, and any loss of staff, will threaten the institutional knowledge needed to stand up a large number of new national standards and policy direction which, under the transitional provisions of the Planning Bill, will be required within a very short time frame.

The risk of diluted functions

8. Although the substantive functions of the Ministry for the Environment (and matters to which it must have regard) under the Environment Act are being transferred unchanged to the new Secretary for the Environment, the reality is that these functions and the time and energy of the Secretary for the Environment will be heavily diluted if that person is required to wear multiple hats. The position of Secretary for the Environment is already a demanding, full-time job, requiring the discharge of functions under many pieces of legislation.

The risk of conflicting functions

9. The Environment Act has also never contemplated that the Ministry (or Secretary) for the Environment will have *conflicting* functions and directions. It is therefore silent about what might happen if the functions of the Secretary come up against development-focused imperatives arising from other legislation or ministerial direction. There is a risk that they will be weakened (for example, when providing policy advice to the Minister).

10. This is borne out by cl 12 of the Bill, which amends section 32 of the Environment Act. The revised section 32 provides that the Secretary must have regard to certain (environmental) matters *as far as practicable*. It may not be considered practicable to have regard to environmental factors when faced with direct and specific instructions to enable development.
11. Integrating a broad range of development and environmental lenses within a large Ministry might also make streams of advice to the Minister less transparent. This is because trade-offs might happen via in-house leadership discussions behind closed doors rather than through contestable and conflicting advice or bespoke, environmentally focused regulatory impact assessments.

The risk of defunding

12. Another risk is that the funding of environmental functions might become less transparent and therefore harder to scrutinise. At present, Ministry for the Environment funding can be seen clearly in parliamentary appropriations. Within agencies that have a mix of environmental and other functions, this becomes much less clear. It may become easier for the government to defund functions in this way, with less public attention, unless the Secretary for the Environment, rather than MCERT as a whole, receives dedicated funding.

Four drafting concerns

13. If the Committee recommends the Bill proceed, there are four key elements of drafting that need to be addressed.
 - a. The Environment Act should clearly establish the position of the Secretary for the Environment to give it a sound statutory basis. In cl 28, the Bill repeals the establishment of the Ministry, but this is not replaced by an equivalent provision for the Secretary (a revised section 29 simply states that the Secretary is responsible to the Minister for performance of its functions).
 - b. Under cl 10, section 30 of the Act is being repealed in its entirety. This currently provides for Ministry staff to be appointed where necessary for the efficient carrying out of its functions. It should, instead, be amended to allow the *Secretary* to appoint staff necessary for the performance of their functions. Otherwise, there is no statutory hook for funding environmentally focused officials, and it would be possible for the Secretary to be advised by more general Ministry staff without appropriate environmental expertise.

- c. A similar concern arises from cl 12, which amends section 30 of the Environment Act. Section 30 provides a range of matters to which every officer or employee of the Ministry for the Environment must have regard. This is being amended to require the Secretary to have regard to those matters. This would remove the legal obligation of others within MCERT to have regard to environmental matters when undertaking their work.

- d. Clause 17 of the Bill amends various statutes specified in Schedule 3 of the Environment Act. This is designed to replace any reference to the Ministry for the Environment with either reference to the Secretary for the Environment or (to paraphrase) the responsible department. For example, under the Fast-track Approvals Act 2024, the definition of “administering agency” is being changed to refer to the responsible department, not the Secretary for the Environment.

The choice between those two may be significant, because the statutory functions under the Environment Act are vested specifically in the Secretary, not the department (MCERT) or its departmental head. This may weaken the environmental lens that is brought to bear on decisions made under other legislation, because the Chief Executive of MCERT is able to wear other hats than those of the Secretary (transport, urban development, housing, and local government).

14. We thank the Committee for considering our submission.

ENDS