

Addendum to Regulatory Impact Statement: Zero Carbon Bill

Regulatory Impact Analysis for proposed changes to the Climate Change Response (Zero Carbon) Amendment Bill 2019

Introduction

Through the Select Committee process a range of changes were proposed by submitters. The proposed changes are:

- broaden the purpose statement to include climate change adaptation
- ensure we strike the right balance between achieving gross emissions reductions and removals, including by providing for changes to the form of the target if required
- ensure the work of the Climate Change Commission adequately reflects the interests of iwi/Māori
- provide for the Commission to advise on how emissions from international aviation and shipping should be included in the 2050 emissions reduction target and budgets as part of its review of the target in 2024
- include the reference to the 1.5° Celsius temperature goal in the purpose of emissions budgets
- extend to the Commission the power to request information on climate change adaptation from certain organisations
- remove the constraints on legal enforceability in respect of the emissions budgets and the 2050 target.

There are also a number of proposed technical amendments.

This addendum provides additional information on the proposed changes and is attached to the original Regulatory Impact Statement.

Adaptation in the purpose statement

We are already beginning to experience the adverse effects of climate change, and adaptation to climate change will increasingly be a focus for decision makers across central and local government, and the private sector. At present, the current purpose statement of the Bill does not clearly articulate the Bill's core adaptation functions (addressed in Part 1C), nor does it provide climate change adaptation the equivalent level of importance as climate change mitigation.

Changing the purpose statement of the Bill to include climate change adaptation will send a clear signal that preparing for, and adapting to the effects of climate change, is integral for a just-transition to a climate-resilient economy.

Balancing emissions reductions and removals

In considering how an emissions budget may be realistically met, the Commission and the Minister must consider key opportunities for emissions reductions and removals in New Zealand, and the principal risks and uncertainty involved with emission reductions and removals. We recognise that there are risks associated with relying on forestry offsets to meet emissions budgets and the 2050 target. Submitters have raised, in particular, that this could lead to unnecessary delays in emissions reductions for some sectors of the economy resulting in inequitable distribution of the mitigation burden, and that significant land use changes, including afforestation, could lead to negative impacts

on communities, particularly in rural areas. We note however, that the issues are not limited to the risks associated with relying on forestry to offset our emissions, but land use change more broadly. It is therefore proposed that the Commission and the Minister be required to consider the implications of land use changes (including afforestation) for communities.

It is also proposed that the Commission be given the ability to consider the form of the target in its reviews. This would allow the Commission to consider, for example, the merits of including a gross target for "all other gases". In any event, the Commission may only recommend changing the target if it is satisfied there has been a significant change in circumstances that justifies the revision. Any changes to the target would require an amendment to the Act, and as such would be subject to Parliamentary scrutiny.

Ensuring the work of the Climate Change Commission reflects the interests of iwi/Māori

The Bill currently intends to give effect to the Treaty by implementing specific consultation and consideration requirements for nominations for members of the Commission, expertise on the Commission, emissions reduction plans and national adaptation plans. It is proposed that the Ministry for the Environment, with support from Te Arawhiti, develop guidance for the Commission for engaging with iwi/Māori.

Securing adequate knowledge and understanding in te ao Māori and te Tiriti o Waitangi will be essential to ensure that the Commission is equipped to appropriately consider te ao Māori perspectives and impacts on iwi and Māori. Existing provisions in the Bill support the consideration of this expertise, and a change to new section 5L is proposed to strengthen the Commission's consideration of the unique Crown-Māori relationship.

Note we remain of the view that Commission appointments should be based on expertise and not representation. This will best provide for the Commission to operate independently and objectively in preparing its advice.

Including international aviation and shipping emissions in the 2050 target

International aviation and shipping emissions are not currently included in the 2050 target and emissions budgets in the Bill. Emissions from international aviation and shipping must be addressed and are an important consideration for New Zealand's climate change strategy.

Including these emissions in the target and budgets is likely to make them more difficult to achieve, and careful consideration of the implications of their inclusion will be needed before any decisions are made. It is proposed that the Commission provide advice to government on how emissions from international shipping and aviation are accounted for under the target and budgets when it undertakes its first review of the 2050 target in 2024. This will allow the government to decide at that point, if these emissions should be brought in to the scope of the target and budgets.

Purpose of emissions budgets

The Bill's purpose specifically states the Bill will provide a policy framework that contributes to the global effort to limit the global average temperature increase to 1.5 degrees above pre-industrial levels. Explicitly aligning emissions budgets with the overall purpose of the Bill will strengthen the need to consider the global response to climate change when determining the level of emissions budgets, and ensure that the 1.5 degree temperature goal remains an active consideration. It will also prioritise early emissions reductions, rather than delaying action.

Power to request information on climate change adaptation

Extending power to Commission

While a broad power to require information would not be appropriate given the commercial sensitivity and other concerns that this would raise, existing provisions in the Bill that empower the Minister to request certain reporting organisations¹ to provide information to inform the National Climate Change Risk Assessment should be extended to the Commission to support the effective performance of its functions.

Confidentiality

The Privacy Act 1993 (Privacy Act) and the Official Information Act 1982 (OIA) will, in general, apply to information held by the Minister and the Commission under the Bill. However, these Acts do not provide blanket coverage because they are subject to the Ombudsman's guidelines, such as, the 'public interest test'. Also, the OIA does not apply to situations where the Minister or Commission obtain or are provided information and so offers no potential protection for commercially sensitive information. Where information has been gathered through the adaptation reporting power, the OIA will only apply when official information is requested by a member of the public. The Privacy Act applies only to natural persons, so would not apply to commercially sensitive information from non-natural persons like companies, which many reporting organisations will be.

In order for the reporting power to be effective (ie, businesses are prepared to provide the information we consider necessary to inform the national risk assessment) it is important the powers of the Minister to request information is balanced with an appropriate level of assurance that commercially sensitive information will be protected. Stronger provisions protecting commercially sensitive information will encourage compliance s9(2)(g)(i)

However, the protection of commercially sensitive information is not a blanket protection – the Minister and Commission retain discretion to disclose information where it is required to discharge their adaptation functions. Information should not be withheld for commercial sensitivity grounds if non-disclosure would materially limit the Minister's ability to produce a national adaptation plan or the Climate Change Commission's ability to produce a National Climate Change Risk Assessment or monitor progress reports.

Legal liability on the Crown

Currently the Bill provides that if the 2050 target or an emissions budget is not met a court may make a declaration to that effect. The only effect of a court declaration is that the Minister must then alert the House to the court declaration and provide a Government response. The Bill does not provide for any other relief for not achieving the target or budget. The Bill also establishes the target and budgets as permissive, but not mandatory, considerations for those exercising a public function, power or duty.

This is an area of developing case law, and it is important that we do not pre-emptively limit the remedies available to the Courts, or how the Bill will be considered across broader government decision making. To allow for the interpretation of the law to develop over time, two changes are proposed:

¹ Reporting organisations include: the Public Service; local authorities; council-controlled organisations; Crown entities; State-Owned Enterprises and companies listed in schedule 4A of the Public Finance Act 1989; lifeline utilities; the New Zealand Police; and New Zealand Defence Force.

- the Bill be amended to be silent on the liability and remedies available for not achieving the 2050 target and emissions budgets, and
- the Bill be amended to remove the clause that provides that failure to take the 2050 target or an emissions budget into account does not invalidate a public decision.

This approach will reduce the certainty about the implications of not meeting the target or an emissions budget, but provides flexibility to the courts in how they are able to respond. s9(2)(h)

[REDACTED]

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Technical amendments

Proposed technical amendments include:

- extending the timeframe for the Commission to provide its monitoring report from two to three months following the publication of a National Greenhouse Gas Inventory report
- consultation requirements on the Commission to allow for:
 - a principles-based approach to Commission's consultation in general
 - process requirements specifically in relation to advice on emissions budgets
 - the Minister to consider whether consultation on emissions budgets has been adequate
- providing consistent transparency requirements on the Minister's responses to statutory Commission advice
- changing timeframes for reports of the Commission to be tabled in the House and published
- providing for the 2030 component of the biogenic methane target to be met if emissions of biogenic methane in 2030 are 10% or more below 2017 levels
- clarifying that offshore mitigation and other removals (eg, carbon capture and storage) can be counted towards the net zero part of the 2050 target
- clarifying that the priority is domestic emissions reductions and removals in achieving emissions budgets (as opposed to the use of offshore mitigation)
- clarifying the timeframes that apply to the delivery of emissions reduction plans