

In Confidence

Office of the Minister for Climate Change

Chair, Cabinet

Climate Change Response (Zero Carbon) Amendment Bill: Approval for Introduction.

Proposal

1. I propose to introduce the attached Bill that will amend the Climate Change Response Act 2002. The amendments focus on legislative changes to the Climate Change Response Act 2002 to:
 - 1.1. provide an enduring framework for the transition to a low-emissions and climate-resilient New Zealand; and
 - 1.2. contribute to the collective global effort to limit the increase in global average temperature to 1.5 degrees Celsius above pre-industrial levels

Executive summary

2. The proposed Climate Change Response (Zero Carbon) Amendment Bill (**the Bill**) will provide a framework for New Zealand to develop and implement clear and stable climate change policies. The Bill will strengthen New Zealand's ability to contribute to the collective global effort to limit the increase in global average temperature to 1.5 degrees Celsius above pre-industrial levels, as set out in Article 2 of the Paris Agreement, recognising that this would significantly reduce the impacts and risks of climate change.
3. On 19 December 2018, the Environment, Energy and Climate Committee (**ENV**) agreed to the policy behind the proposed legislative amendments, including:
 - 3.1. setting an emissions reduction target for 2050
 - 3.2. establishing a system of successive emissions budgets to achieve the 2050 target
 - 3.3. establishing an independent Climate Change Commission to provide impartial advice in monitoring of our progress toward long-term climate goals, and
 - 3.4. instituting a range of climate change adaptation measures to ensure we understand, and are responding to, the risks posed by climate change.
4. On 29 April 2019, Cabinet agreed that it should consider the Bill for introduction at its meeting on Monday, 6 May 2019 [CAB-19-MIN-0189 refers]. Following Cabinet's agreement, I intend to make a public announcement of the policy

decisions and make a copy of the Bill available to the public on 8 May. I intend for the Bill to be introduced to the House of Representatives on 9 May, and have its first reading on 28 May.

Policy

Existing climate change legislative framework

5. New Zealand's existing climate change legislative framework includes the Climate Change Response Act 2002 (**CCRA**). The CCRA put in place a legal framework to enable New Zealand to meet its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol. The CCRA also established a national inventory agency to record and report information relating to greenhouse gas (**GHG**) emissions, and introduced the New Zealand Emissions Trading Scheme (**NZ ETS**).
6. In addition to the CCRA, New Zealand has a 2050 emissions reduction target to reduce GHG emissions to 50 per cent below 1990 levels by 2050. This was notified in the New Zealand Gazette in March 2011.

2016 Paris Agreement

7. On 4 October 2016, New Zealand ratified the Paris Agreement, which includes the aims to:
 - 7.1. hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels; and
 - 7.2. increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production.²
8. In addition to managing and delivering this domestic transition, New Zealand's contribution to the global goals of the Paris Agreement will continue to be expressed separately through our Nationally Determined Contributions (NDCs). These international NDCs will continue to include economy-wide absolute emission reduction targets, and each successive target will represent progression on the last and reflect highest possible ambition.³

Need for legislative change

9. New Zealand needs to make the transition to a low-emissions economy. The current domestic legislation and GHG emissions reduction targets neither provide long-term regulatory certainty nor require successive governments to commit resources towards achieving our long-term goals. This compromises New

¹ The Climate Change Response (2050 Emissions Target) Notice 2011, New Zealand Gazette, No. 41, 31 March 2011, p 987

² Paris Agreement Article 2 paragraph 1 (a) and (b)

³ Paris Agreement Article 4 paragraphs 3 and 4.

Zealand's ability to continue delivering prosperity in an emissions-constrained future.

Proposed legislative change

10. In December 2018, the ENV Cabinet Committee agreed to introduce an enduring framework for New Zealand to transition to a low-emissions economy under the Zero Carbon Bill. This Bill will be progressed as an amendment to the Climate Change Response Act 2002. The proposed framework is set out below.

Climate Change Commission

11. The Bill establishes an independent Climate Change Commission (the Commission) to provide independent expert advice on the transition to a low-emissions and climate resilient New Zealand, and to hold the government to account in order to make progress towards New Zealand's climate objectives.

12. The Commission will have a range of regular advisory and monitoring functions set in statute, and may also provide advice at the request of the responsible Minister. The responsible Minister will also be required to publicly respond in writing to the reports of the Commission.

13. The ENV Committee agreed that one of the functions of the Commission would be to provide advice regularly on the settings of the NZ ETS [ENV-18-MIN-0053 refers]. That decision will be given effect separately from this Bill.

Target

14. The Bill sets in statute an emissions reduction target (the target) for reducing GHGs by 2050. The target has two components; one emissions reduction goal for biogenic methane, and another for all other GHGs.

14.1. The target component for biogenic methane will require gross emissions of biogenic methane to be reduced by 24 to 47 per cent below 2017 levels by 2050, and will include an interim requirement to reduce gross emissions of biogenic methane to 10 per cent below 2017 levels by 2030.

14.2. The target component for all other GHG is set to reach net zero emissions by 2050 including offsets through forestry and other land uses, and international emissions reductions.

15. From 2024 the Commission will review the 2050 target in conjunction with its advice on emissions budgets. This review will consider a number of factors and will ensure the Target remains fit-for-purpose. The Commission may also review the Target at any other time at the request of the government.

Emissions budgets

Establishing an emissions budget framework

16. The Bill establishes a system of emissions budgets to step progressively towards the 2050 Target, and enable policy settings to adapt within a predictable framework.

17. Emissions budgets will state the quantity of GHG emissions that will be permitted in a five year budget period. An emissions budget will cover all GHGs and may be offset by removals of GHGs (for example, by forestry) and international emissions reductions.
18. To provide greater predictability, three emissions budgets will be in place at any one time. This means that emissions budgets must be set 10 - 15 years in advance.
19. The Bill also provides for reviews of emissions budgets, and “banking” and “borrowing” of emissions between budget periods.

Developing a plan to meet emissions budgets

20. Once an emissions budget has been set and notified, the Bill places an obligation on the government to prepare a plan that includes policies and strategies to ensure that the emissions budget is met.
21. The Minister will prepare and notify the plan following advice from the Commission, and can update it throughout the emission budget period to ensure that it remains fit-for-purpose.

Monitoring progress towards emissions budgets

22. The Commission will prepare annual reports that track New Zealand’s GHG emissions and removals, and track progress towards the emissions budgets.
23. The Commission will also prepare a report at the end of the budget period that determines whether the emissions budget has been achieved, and evaluates the success of the emissions reduction plan.
24. The government will continue to report progress towards its international targets and commitments under the United Nations Framework Convention on Climate Change and the Paris Agreement;

Legal advice withheld to maintain legal professional privilege

Adaptation

National Climate Change Risk Assessment

27. The Bill requires the Commission to prepare a National Climate Change Risk Assessment (**NCCRA**) every six years. The NCCRA evaluates risks to New Zealand from the current and future effects of climate change. The Minister, rather than the Commission, will be responsible for preparing the first NCCRA.

National Adaptation Plan

28. In response to each NCCRA, the Bill requires the Minister to produce a National Adaptation Plan (**NAP**). The NAP will set out the government's objectives, strategies, policies and proposals for responding to the effects of climate change, including the most significant risks identified in the NCCRA. The draft NAP will be subject to full public consultation before it is finalised and published. The Bill requires the Commission to monitor and report on the implementation of the NAP, and the responsible Minister to respond to the Commission's progress reports.

Adaptation information gathering power

29. The Bill enables the Minister to require certain organisations, namely specified central government organisations, local government organisations, and 'lifeline utilities', to provide information on climate change adaptation. The power is intended to improve our understanding on New Zealand's preparedness for dealing with the effects of climate change, and will be used to inform the development of the NCCRA, the NAP and subsequent progress reports on the NAP.

Possible contentious issues

30. The level of the 2050 Target is likely to be contentious as it broadly determines the magnitude of the transformation across the economy. The Target has been set to be consistent with the latest science, informed by public consultation and with input from a range of experts. We can expect the Target to be the subject of significant public interest during the Select Committee stage of the Bill.

Impact analysis

31. A Regulatory Impact Statement was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet committee approval of the policy relating to the Bill was sought [ENV-18-MIN-0053 refers].

Compliance

32. The Bill complies with the following:

- 32.1. the principles of the Treaty of Waitangi;
- 32.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- 32.3. the disclosure statement requirements. A disclosure statement has been prepared and is attached to the paper
- 32.4. the principles and guidelines set out in the Privacy Act 1993
- 32.5. relevant international standards and obligations, including the Paris Agreement; and
- 32.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Technical and administrative changes

33. Cabinet gave me authorisation to make technical and administrative changes required to finalise draft legislation giving effect to the proposals in the Cabinet policy paper, in keeping with the overall policy aims of the proposals, and in consultation with other Ministers as appropriate [ENV-18-MIN-0053 refers].

34. Appendix A sets out the technical and administrative changes that are proposed.

Consultation

35. Cabinet agreed that the development of the Bill should be open and transparent, and achieve widespread public buy-in. To that end, Cabinet approved public consultation on proposals for the Bill [CAB-18-MIN-0247 refers].

36. Public consultation on the Bill ran from 7 June until 19 July 2018. The Ministry for the Environment hosted 16 public meetings in all major cities, as well as day-long workshops with key stakeholders, and youth engagement events. The Ministry for the Environment also received over 15,000 public submissions, including 12,444 long submissions.

37. Consultation with the Government caucus, and other parliamentary parties represented in Government has taken place.

38. The following agencies were also consulted on this paper: the Treasury, State Services Commission, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Primary Industries, Ministry of Transport, Department of Conservation, Te Puni Kōkiri, New Zealand Police, Department of Defence, Ministry of Health, and the Department of Internal Affairs. The Ministry of the Prime Minister and Cabinet was informed.

Binding on the Crown

39. I propose the Bill will be binding on the Crown.

40. The Bill will establish the Commission. The Commission will be an independent Crown entity under Part 3 of Schedule 1 of the Crown Entities Act 2004. It will be subject to the Ombudsman Act 1975 and the Official Information Act 1982.

Financial implications

41. The funding for both the Commission and for resources to support the Government's response to the Commission's advice has not yet been appropriated.

42. Budget 2019 will create a tagged contingency with delegation to joint Ministers (Finance, Environment and Climate Change) to release funding for the establishment and ongoing output expenses of the Commission, and for the implementation of the Government's response to the Commission's recommendations.

Associated regulations

43. There are no associated regulations required.

Definition of Minister

44. The existing definition of Minister in the CCCRA provides that:

44.1. *Minister* means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.

Commencement of legislation

45. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

46. I propose the Bill should be introduced on 9 May 2019, and passed by the end of the year. The Bill should be referred to the Environment Committee for consideration.

Proactive release

47. I propose to release this paper proactively. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Climate Change recommends that the Committee:

1. **note** that the Climate Change Response Act (Zero Carbon) Amendment Bill holds a category 2 priority on the 2019 Legislation Programme (must be passed in the year)
2. **note** that the Bill provides an enduring framework for the transition to a low-emissions, climate-resilient New Zealand, and contributes to the collective global effort to limit the increase in global average temperature to 1.5 degrees Celsius above pre-industrial levels
3. **note** that the Bill has been drafted as an amendment to the Climate Change Response Act 2002
4. **agree** to rename the Bill, formerly described as the Climate Change Bill, as the Climate Change Response (Zero Carbon) Amendment Bill, being an amendment to the Climate Change Response Act 2002
5. **note** that Cabinet authorised the Minister for Climate Change to make technical and administrative changes required to finalise draft legislation in consultation with other Ministers as appropriate [ENV-18-MIN-0053 refers]
6. **note** that the following technical and administrative amendments, consistent with policy intent, were made under the authorisation noted in recommendation 5
 - 6.1. add a requirement for the Commission to consider the distribution of benefits, costs and risks between generations to encourage a future focus and ensure consistency with considerations about (inter)generational equity
 - 6.2. change the inclusion of “te reo me ona tikanga Māori,…” to “te reo Māori, tikanga Māori,…” with the corresponding interpretation to give consideration to tikanga Māori more broadly (in some places, in addition to te reo Māori)
 - 6.3. remove the requirement for the Commission to wait for its reports to be tabled before publication. Instead, require the Commission to publish any report it provides, and require the Minister to table the report in Parliament as soon as reasonably practicable, but within twelve weeks of receiving it
 - 6.4. add a limiting clause to clarify that the Commission need not continue reporting on the implementation of a NAP for more than one year after a new NAP is published
 - 6.5. require the Minister/Commission to take into account ‘scientific and technical advice’ in preparing an NCCRA and NAP, rather than ‘best available information, including ‘scientific and technical advice’
 - 6.6. include transitional provisions for the first NCCRA, clarifying that timeframes for preparing the first NAP begin after the Act comes into force or the first NCCRA is published, whichever comes later
 - 6.7. allow for emissions budgets to be set post-2050
 - 6.8. require the Climate Change Commission and the Minister to have regard to international agreements when respectively advising on and setting emissions budgets.

7. **approve** the Climate Change Response (Zero Carbon) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives
8. **agree** to release the Climate Change Response (Zero Carbon) Amendment Bill to the public on 8 May, ahead of introduction on 9 May
9. **agree** for the Parliamentary Counsel Office to make minor changes to the Bill before it is released to the public on 8 May in order to comply with its quality assurance processes
10. **agree** that the Government propose that the Bill be:
 - 10.1. referred to the Environment Committee for consideration
 - 10.2. enacted by the end of 2019

Authorised for lodgement.

Hon James Shaw

Minister for Climate Change

Appendix 1. Technical and administrative changes to the Bill

New section to be added through the Bill	December 2018 ENV agreement	Technical and administrative change
5L(e)	101	Add a requirement for the Commission to consider the distribution of benefits, costs and risks between generations to encourage a future focus and ensure consistency with considerations about (inter)generational equity
5H(1)(d)(ii)	120.2.2	As an element of the Commission's expertise, change the inclusion of "te reo me ona tikanga Māori," to "te reo Māori, tikanga Māori". This is now expressed as "te Tiriti o Waitangi and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity).
5K(4) and (5), 5P(3) and (4), 5X(4) and (5), 5ZB(3) and (4), 5ZE(3) and (4), 5ZH(3), 5ZI(2) and (3), 5ZO(1) and (2), 5ZT(1) and (2)	100.2	Remove the requirement for the Commission to wait for its reports to be tabled before publication. Instead, require the Commission to publish any report it provides to the Minister, and require the Minister to table the report in Parliament as soon as practicable but within twelve weeks of receiving it.
5ZN(2)(g), 5ZQ(4)(g)	70.7, 75.7	Require the Minister/Commission to take into account 'scientific and technical advice' in preparing a NCCRA and NAP, rather than 'best available information, including scientific and technical advice'.
5ZS(3)	82	For progress reporting on the implementation of a NAP, add in a limiting clause to clarify that the Commission need not continue reporting on the implementation of a NAP for more than one year after a new NAP is published.
Schedule 1AA, Part 1, clause 2	N/A	Include transitional provisions for the first NCCRA, providing that the first NCCRA will be valid if completed before the Act comes into force and clarifying that the timeframe for preparing the first NAP begins after the Act comes into force or the first NCCRA is published, whichever comes later.
5T, 5U	16	Allow for emissions budgets post-2050.
5Z(2)(b)(xi)	23	Require the Commission and the Minister to have regard to international agreements when respectively advising on and setting emissions budgets.