



Submission to: The Environment Committee,
NZ Parliament

On: The Climate Change Response
(Zero Carbon) Amendment Bill

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By: The Interim Climate Change Committee

Introduction

1. The Interim Climate Change Committee (ICCC) was established as a precursor to the Climate Change Commission.
2. The ICCC is a Ministerial Advisory Committee currently comprising:
 - a. Chair: Dr David Prentice
 - b. Deputy Chair: Lisa Tumahai
 - c. Dr Keith Turner
 - d. Dr Jan Wright
 - e. Dr Harry Clark
3. Short descriptions of each ICCC member are attached in Appendix A. The ICCC also included Dr Suzi Kerr, as a special advisor, up until 30 April 2019.

Our mandate and work

4. The ICCC's work is directed through Terms of Reference set by the Minister for Climate Change.¹
5. The original Terms of Reference required the ICCC to prepare two reports. These reports: ***Action on agriculture emissions***, and ***Accelerated electrification*** were handed over to Minister Shaw on 30 April 2019. Both reports were released for consultation by the Government on 16 July 2019, along with the Government's response to the recommendations made by the ICCC.
6. The Terms of Reference were updated in March 2019 with the addition of a requirement to deliver *"evidence and analysis of plausible pathways to, and any elements of, the 2050 emissions reduction target(s), to support the advice required of the Climate Change Commission (the Commission) shortly after its establishment."*
7. In May 2019 the ICCC wrote to the Minister to advise how it was approaching the plausible pathways work, and the Minister responded to affirm the approach.²
8. In this context, the ICCC has begun to plan for the work required to prepare emissions budgets and emissions reduction plans, as would be required by Clause 8 of the Bill.

¹ The current Terms of Reference are available at: <https://www.iccc.mfe.govt.nz/who-we-are/terms-of-reference/>.

² Both letters are available at: <https://www.iccc.mfe.govt.nz/our-news/updates-from-the-chair/iccc-work-programme-from-1-may-2019/>.

Our experience

9. The ICCC's role is to provide independent, expert advice. In making this submission, we hope to provide particular insight on the provisions of the Bill based on our experience as an independent committee. We have considered how the Bill as written would have influenced how we prepared our advice; and, in light of this, how provisions of the Bill could influence the Climate Change Commission in delivering its advice. Thus, our submission is focused on the provisions of the Bill that deal with practical aspects of the Commission's role.

10. We believe the following key factors were critical to preparing our reports on agricultural emissions and electricity in a tight timeframe:

a. Independence and Trust.

The independence of the committee meant that we were free to undertake the work in the way we best saw fit. It also meant that we were able to act in a politically impartial way. This is critical because climate change is an issue that must transcend political cycles.

b. Proactive Engagement.

We established challenge and review groups, worked with iwi/Māori through an engagement strategy, and engaged regularly across sectors to ensure we both updated stakeholders on our thinking and sought feedback.

c. Credible analysis using the best tools.

Preparing robust advice on electricity and agriculture required extensive analytical work, along with proactive engagement. This included obtaining a wide range of data and other information, commissioning modelling, consulting experts, analysing policy options, and considering a broad range of social, economic and environmental dimensions. We were able to be agile – adjusting, prioritising, and pursuing aspects as required.

d. A committee of experts

Shaping our advice required judgment. We were greatly aided as a committee by our collective analytical expertise and in-depth knowledge, and the independently-minded nature of members. We did not see ourselves as representing particular sectors or interests, but as a team of experts collectively scrutinising the evidence and analysis, and making expert judgements. We continually challenged the evidence and each other.

11. These factors will also be critical to the success of the Climate Change Commission.

12. Throughout the process of preparing our two reports, we heard strong pleas for leadership to guide the movement towards 'zero carbon'. Across business, NGOs, iwi/Māori, and agriculture, we heard a desire for action in a way that delivers greater investment certainty, and careful consideration of how and where impacts and opportunities would fall. We found strong support for the establishment of an entity insulated from changes in political agendas which can provide a robust and credible evidence base, analysis and advice on climate change impacts and responses.
13. We therefore unequivocally support the establishment of a Commission, as an Independent Crown Entity to provide independent, expert advice to the Government as described in clause 8 (new section 5B).

Our submission

14. The initial work the Bill requires the Climate Change Commission to do is to prepare three emissions budgets and an emissions reductions plan by February 2021. The preparation of emissions budgets for New Zealand will require analysis of virtually all sectors of the economy, as well as analysis of the interactions between them. This is no small task and will take considerable time and resource.
15. Sectoral analysis will require obtaining a great range of technical information, and the use of different modelling techniques to develop possible mitigation pathways. Some models will already be available, such as that used by the IPCC to inform its report on electricity. Other models will need to be developed. Putting these sectoral analyses together will require the development of an economy-wide model, and the IPCC has begun work preparing for this.
16. It is therefore important to consider the practical implications of the Bill for the Commission's ability to do its work. We believe five areas need careful consideration:
 - a. Timeframes for advice
 - b. Obtaining information
 - c. Institutional competence and exercising judgment
 - d. Discretion on engagement and consultation
 - e. Conferral of incidental powers.

Timeframes for advice

17. The Bill contains a deadline of 1 February 2021 for the Climate Change Commission to advise on three emissions budgets and the direction for the first emissions reduction plan. The Commission is expected to be established late this year, and, in effect, will only have a year to prepare these pieces of advice. Despite the preparatory work being done by the ICCC and its secretariat, this timeframe is extremely challenging.
18. The Bill also contains a deadline of 31 December 2021 for the Minister to set the first three emissions budgets and emissions reduction plan (with supporting policies and strategies) – 11 months after receiving the Commission’s advice.
19. It will be a major task for the Government to turn the Commission’s advice on the first emissions reduction plan into a much more detailed suite of policies and strategies to achieve it. However, the task of the Minister in responding to the Commission and setting the emissions budgets should be simpler, unless the Minister chooses to substantially depart from the Commission’s advice.
20. To best enable delivery of high-quality budgets and plan in a short timeframe, the Environment Committee could extend the date for the Commission’s initial pieces of advice to 1 June 2021.
21. For comparison, the UK Committee on Climate Change took 18 months to prepare its first report (three emissions budgets) from when it was first set up in shadow form. It was aided by existing data and modelling tools being largely fit-for-purpose in the UK.
22. There is a more general risk of overloading the Commission – particularly in its first year. For instance, there are proposals for the Commission to give advice on the fraught issue of the methane target early in 2020, and to advise on technical ETS settings currently being developed by the Ministry for the Environment. The Commission will not be able to perform miracles and overloading it will risk damaging its credibility.
23. Finally, we also suggest the Environment Committee consider placing a time limit on when an application for judicial review can be filed to ensure that the timeframe for the Commission’s advice, and the Government’s decisions on its advice, are not unduly delayed. Other legislation includes such time limits for legal challenge of time-sensitive matters.³
- 24. We recommend that the Environment Committee considers:**
 - a. adjusting the timeframe for the Commission’s advice on initial emissions budgets and reduction plan to 1 June 2021;**
 - b. ensuring that the Commission is not given any additional tasks prior to this date; and**
 - c. adding a clause that sets a time limit for lodging judicial review applications.**

³ Two examples are: a 30 day time limit on judicial review of aquaculture decisions under the Fisheries Act 1996 section 186J; and a 28 day time limit in the Immigration Act 2009 section 247.

Obtaining information

25. The quality of analysis that the Climate Change Commission is able to undertake will depend on what information it has available. It will take time to find and obtain data and models from different government agencies. The private sector will also hold useful information.
26. The Bill is silent on how the Commission will gain access to necessary information. If memoranda of understanding or information sharing arrangements with relevant agencies to access these data and models are required, these will take time to establish and will not necessarily be permanent arrangements.
27. The Bill should be amended to include an information gathering provision, including access to public and privately held information, and official statistics. Examples of similar powers held by other agencies include the New Zealand Productivity Commission, the Auditor General, the Children’s Commissioner, and the Parliamentary Commissioner for the Environment.⁴
28. Such a power should be accompanied by a “duty of secrecy” – an obligation to protect confidential and sensitive information received.
29. The Bill proposes, in clause 10, to include the Climate Change Commission under the obligations to maintain confidentiality of section 99 of the Act. These obligations currently apply to the Environmental Protection Agency in relation to its regulatory role in administering the NZ Emissions Trading Scheme (under Parts 4 and 5 of the Act). The main purpose of section 99 is to protect specific emissions information that could be commercially sensitive.
30. Advisory agencies such as the Children’s Commissioner (an Independent Crown Entity) and the Parliamentary Commissioner for the Environment (an Officer of Parliament) have a different form of obligation – a duty to maintain secrecy, except where disclosure serves the statutory purposes of the agency.⁵ This provides the agency with discretion to judge what should be released to serve the purposes of its Act, and what should not be released to protect confidential or sensitive information. This form is more appropriate for the Climate Change Commission as an advisory agency.
- 31. We recommend that the Environment Committee considers:**
- a. adding information gathering powers that enable the Commission to access both public and privately-held information, and official statistics; and**
 - b. replacing clause 10 with a duty of secrecy.**

⁴ New Zealand Productivity Commission Act 2010 section 15 Access to Statistical Information; Public Audit Act 2001 Part 4 Information-gathering powers and disclosure of information; Children’s Commissioner Act 2003 section 20 Special powers to call for information or documents; Environment Act 1986 section 19 Power to Obtain Information.

⁵ Children’s Commissioner Act 2003 section 22 Commissioner and staff must maintain secrecy, and Environment Act 1986 section 20 Commissioner and staff to maintain secrecy, etc.

Institutional competence and exercising judgment

32. The nature and complexity of climate change mean that the Climate Change Commission is expected to, and must be able to, use its judgment - including in forming independent, expert advice on emissions budgets and emissions reduction plans.
33. In that context, we consider that it would assist the Commission in meeting its responsibilities if those responsibilities, including the range of prescribed matters in the Bill, are set out as clearly and unambiguously as possible.
34. New sections 5L applies to all functions of the Commission, while 5Q, 5Z and 5ZN contain further lists of matters to be considered when advising on targets, budgets and risk assessments respectively. Some of these matters, especially as expressed in 5Z, are ambiguous, repetitive or unfocused. In contrast, section 10 of the UK Climate Change Act 2008 provides the UK Committee on Climate Change with a single clear set of matters to taken into account when advising on carbon budgets. See Appendix E.
- 35. We recommend that the Environment Committee considers refining and simplifying the range of prescribed matters and processes in the Bill, including any additions proposed by submitters, to ensure that the Bill only includes those that are both material and clear.**

Discretion on engagement and consultation

36. The Bill, through new sections 5Z and 5ZE, obliges the Climate Change Commission to formally publicly consult on drafts of its advice on budgets and plans.
37. A primary purpose of engagement and consultation for the Commission will be to seek information or evidence relevant to what to consider in its independent, expert analysis and eventual advice. This input is likely to be best sought early and often, rather than through formal submissions on a draft report at a later stage in the process.
38. It is our experience that such proactive and regular engagement is invaluable, and we believe that it would assist the Commission to follow this model. This could include initiatives such as an online portal to receive evidence and ideas for consideration, regular discussion with umbrella stakeholder groups, sectoral stakeholder engagements, cross-sector forums, expert review and challenge groups, and hui with iwi/Māori. The Commission should not be prevented from undertaking public consultation where this is deemed appropriate, but our experience suggests that its nature should not be prescribed.
39. This approach is consistent with what has been taken in the UK, where the Climate Change Act 2008 does not prescribe the form of engagement and consultation required of the UK Committee on Climate Change, but leaves that to its judgment. In practice, the UK Committee uses a range of methods for ensuring it is aware of a breadth of evidence to inform its independent, expert advice. These include individual meetings with key stakeholders, roundtables, workshops, and focused calls for evidence, but do not include consulting publicly (or otherwise) on draft reports or emissions budgets.
40. The Commission will also need to be transparent, accessible and impartial in its engagement if it is to act independently and be accountable to the public. To this end, we will be recommending to the Commission that it publishes and regularly updates an engagement plan and register of engagements.
41. **We recommend that the Environment Committee considers revising clauses that prescribe the nature of the Commission's engagement and consultation, including:**
 - a. **amending 5M to state:**

5M Engagement and consultation
The Commission may—
 - a) ~~*publish and invite submissions on discussion papers and draft reports*~~ ***engage and consult widely with New Zealanders, including relevant sector representatives, affected communities, and others; and***

- b) undertake any ~~other~~ type of engagement and consultation that it considers necessary for the performance of its functions and duties under this Act ;*
- b. amending 5Z(2)(b)(v), in relation to the Commission’s advice on emissions budgets, to state: *“the results of any engagement and ~~public~~ consultation on an emissions budget”*; and
- c. removing sub-clause (a) from 5ZE(3), in relation to the Commission’s advice on emissions reduction plans, so the clause mirrors the requirements of 5Z(2).

Conferral of incidental powers

42. The UK Climate Change Act 2008 provides general ancillary powers to the UK Committee on Climate Change: ***“General ancillary powers (1) The Committee may do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions.”***⁶ Such general enabling powers are also common in New Zealand legislation for agencies with advisory powers. Two examples are the Legal Complaints Review Officer and the Parliamentary Commissioner for the Environment.⁷
43. The presence of such a provision not only helps a statutory body to carry out its statutory functions, but its presence would also help to prevent legal challenges that it lacked a lawful power to do something that it had judged was necessary or appropriate for carrying out its statutory functions. The inclusion of a provision of this nature in the Bill will help to ensure that the Climate Change Commission can efficiently and effectively carry out its work.
44. In particular, the Commission will need to undertake modelling in order to develop its advice. This may necessitate developing its own modelling tools over time, where the Commission judges that existing tools are not fit for purpose. The Bill should clearly enable the Commission to use and develop models in carrying out its functions.
- 45. We recommend that the Environment Committee considers adding a provision that expressly confers incidental powers on the Commission to do anything it judges appropriate to carrying out its functions (including modelling), which could be achieved by inserting this clause:**
- 5JA General powers***
- The Commission may do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions under this Act.***
- a) For the avoidance of doubt, this includes any use and development of modelling tools.***

⁶ UK Climate Change Act 2008 section 39 General ancillary powers.

⁷ Lawyers and Conveyancers Act 2006 section 202 General powers; Environment Act 1986 section 18 Powers of the Commissioner.

Appendix A - ICCC members:

Dr David Prentice (Chair)

Dr Prentice was most recently the CEO and Managing Director of Opus International Consultants. He is Chair of Business New Zealand's Infrastructure sub-group, a member of the Institute of Directors, a Chartered Professional Engineer and a Fellow of Engineering New Zealand.

Ms Lisa Tumahai (Deputy Chair)

Ms Tumahai is Kaiwhakahaere (Chairperson) of Te Rūnanga o Ngāi Tahu. The climate change work championed by Rūnanga across tribal assets, along with protecting and advancing collective interests of Iwi provide valuable insights for the Committee. As whanau member of Ngāti Waewae, Lisa is acutely aware of the challenges climate change presents for local communities. As Kaiwhakahaere Te Rūnanga o Ngāi Tahu, Lisa oversees the operations of Ngāi Tahu Farming, providing her with an understanding of agri-business as well as bringing strong relationships across the sector. Ms Tumahai brings knowledge and experience of te reo me ona tikanga, mātauranga Māori, Māori business and the Māori economy.

Dr Harry Clark

Dr Clark is a New Zealand expert on agricultural greenhouse gas research, and is currently the Director of the New Zealand Agricultural Greenhouse Gas Research Centre, prior to which he headed up AgResearch's Climate, Land and Environment section. Harry also sits on a number of New Zealand and international government panels and committees and co-chairs the Livestock Research Group of the Global Research Alliance on Agricultural Greenhouse Gases.

Dr Jan Wright

Dr Wright was New Zealand's third Parliamentary Commissioner for the Environment. She spent two terms as Commissioner, between 2007 and 2017, and has particular expertise in science, policy, and economics. In that role, she produced a number of reports on climate change issues, including agricultural emissions and sea level rise.

Dr Keith Turner

Dr Turner has a background in energy, business and governance. He was CEO of Meridian Energy for many years, and more recently in governance roles, being Chair or Director of Fisher & Paykel Appliances, Auckland International Airport, Spark Infrastructure (Australia), South Australian Power Networks (Australia), Victoria Power Network (Australia) and Chorus. He brings a strong understanding of the energy sector to the Committee.

Dr Suzi Kerr (Term finished 30 April 2019)

Dr Kerr is an internationally renowned expert in economics, climate change policy and emissions trading. As a former Senior Fellow at Motu Economic and Public Policy Research, and Adjunct Professor of Public Policy at Victoria University, she is also a regular participant in climate roundtables and has authored a number of papers on climate policy and emissions trading in New Zealand. Dr Kerr was a specialist advisor to the Committee.

Appendix B

In the UK Climate Change Act 2008 there is one list of matters for the UK Climate Change Committee to consider:

10 Matters to be taken into account in connection with carbon budgets

(1) *The following matters must be taken into account—*

(a) *by the Secretary of State in coming to any decision under this Part relating to carbon budgets, and*

(b) *by the Committee on Climate Change in considering its advice in relation to any such decision.*

(2) *The matters to be taken into account are—*

(a) *scientific knowledge about climate change;*

(b) *technology relevant to climate change;*

(c) *economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;*

(d) *fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;*

(e) *social circumstances, and in particular the likely impact of the decision on fuel poverty;*

(f) *energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;*

(g) *differences in circumstances between England, Wales, Scotland and Northern Ireland;*

(h) *circumstances at European and international level;*

(i) *the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question.*