

10 February 2020

**Re: Submission on the Climate Change Response (Emissions Trading Reform)
Amendment Bill and Supplementary Order Paper No 413**

To the Environment Committee

New Zealand Parliament

Background

1. This is a submission from the Climate Change Commission. The Commission is an independent Crown entity established in December 2019 pursuant to the Climate Change Response (Zero Carbon) Amendment Act. Contact details for the Commission and short descriptions of each Commission member are provided in an appendix.
2. The statutory purposes of the Commission are “to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and to monitor and review the Government’s progress towards its emissions reduction and adaptation goals.”
3. We wish to make a written and oral submission to the Environment Committee on the Climate Change Response (Emissions Trading Reform) Amendment Bill (ETR Bill). We filed a request for an oral submission on this Bill prior to the 17 January 2020 due date for submissions. Given the very recent establishment of the Commission, we respectfully request that the Environment Committee consider this written submission despite it being made after the deadline.
4. We note that the Interim Climate Change Committee (ICCC) prepared and approved the lodging of a written submission on the ETR Bill in December 2019 before the expiry of its Terms of Reference. Please note that the Commission is independent of the ICCC but has received the ICCC’s body of work.

Scope of this submission

5. In fulfilling its statutory obligations under the Climate Change Response Act 2002 (CCRA), the Commission’s advice to the Government must be based on a broad range of considerations (section 5L) and involve engagement, consultation, and (where considered necessary) public participation (section 5M).
6. We do not have a statutory obligation to submit on the ETR Bill, and therefore this submission is not bound by the procedural requirements of the CCRA in relation to the Commission. Nevertheless, we wish to adhere to the spirit of the Commission’s mandate for advice that is

based on the best available evidence and independent analysis, and informed by engagement and consultation. For this reason, we are not currently in a position to provide comprehensive advice on the ETR Bill.

7. The scope of our input on the ETR Bill is therefore limited to issues relating to:
 - a. the definition of the Commission's roles and responsibilities under the ETR Bill, and
 - b. the ability of the Commission to fulfil those roles and responsibilities.
8. We provide input on the purpose of the New Zealand Emissions Trading Scheme (NZ ETS) (section 3); the Treaty of Waitangi (Te Tiriti o Waitangi) (section 3A); the Commission's advice to the Minister on the phase-out of allocation for agriculture (section 85A); and the Commission's advice to the Minister related to regulations for overall limits and price control settings for units (section 30GB). We also note two policy issues not addressed by the ETR Bill.
9. We expect, however, to comment further on the role and operation of the NZ ETS in our advice on the first three emissions budgets and the direction of policy required in an emissions reduction plan, to be provided to the Minister for Climate Change by 1 February 2021.
- 10. We have reviewed the ICCC's written submission on the ETR Bill. We wish to endorse that submission and recommend it to the Environment Committee. We note that the Commission may develop further advice on these issues over time.**

Purpose of the NZ ETS

11. As drafted under section 3(1)(b), the purpose of the CCRA includes to:

“provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce the emission of greenhouse gases by—

 - (i) assisting New Zealand to meet its international obligations under the Convention, the Protocol, and the Paris Agreement; and
 - (ii) reducing New Zealand's net emissions of those gases to below business-as-usual levels.”
12. We consider that this purpose should be redrafted to reflect the new framework for New Zealand's climate policies created by the recent passing of the Climate Change Response (Zero Carbon) Amendment Act.
13. This would assist the Commission in undertaking its existing statutory functions under the CCRA and new roles proposed in the ETR Bill. For example, when monitoring and reviewing the Government's progress toward its emissions reduction goals, it would better enable us to evaluate the performance of the NZ ETS with regard to supporting achievement of emissions budgets and the 2050 target under the CCRA.
- 14. We recommend that the CCRA's section 3(1)(b)(ii) be amended such that one purpose of the NZ ETS is to assist New Zealand to meet its 2050 target and emissions budgets under the CCRA.**

Treaty of Waitangi

15. The ETR Bill proposes amendments to the CCRA's section 3A on the Treaty of Waitangi (Te Tiriti o Waitangi), which appear intended to streamline and avoid duplication. The proposed amendments, however, would also repeal sections 3A(ab), 3A(ac), 3A(ad) and 3A(ae) relating to nominations and appointments to the Commission, the preparation of an emissions reduction plan and the preparation of a national adaptation plan.¹
16. These sections were only recently inserted into the CCRA by the Climate Change Response (Zero Carbon) Amendment Act 2019. While sections 3A(ac), 3A(ad) and 3A(ae) duplicate wording elsewhere in the CCRA, section 3A(ab) includes wording not repeated ("particular attention is required to seeking nominations from iwi and Māori representative organisations") in the relevant section in Part 1A of the CCRA (section 5G). Furthermore, these sections (3A(ab) to 3A(ae)) are important for emphasising the Crown's Treaty of Waitangi responsibilities in the process for appointing Commission members and developing plans for climate change mitigation and adaptation.
- 17. We recommend that sections 3A(ab), 3A(ac), 3A(ad) and 3A(ae) be retained in the CCRA.**

Phase-out rate for allocation of NZUs in relation to agriculture

18. Under the CCRA's existing section 85(2)(b), the level of assistance to agricultural participants in the NZ ETS in the form of free allocation is set to be reduced at a rate of 0.01 per year. This phase-out is temporarily suspended under section 85A. Under SOP 413, clause 79, the Minister must consider the advice of the Commission about whether the phase-out rates should continue to be suspended.
19. We note that the new section 215(4)(a) proposed in clause 186A of SOP 413 requires Ministers to request a report from the Climate Change Commission about what assistance, if any, should be given to participants. This, however, is framed as being in relation to the alternative pricing system for farm-level agriculture emissions. It therefore remains unclear how the appropriate level of assistance for agricultural participants in the NZ ETS will be assessed, for participation in respect of emissions from nitrogenous fertiliser or if an alternative pricing system for livestock emissions is not adopted.
- 20. We recommend that the Commission should also have the ability to advise the Minister on the level of the phase-out rate (i.e. whether 0.01 or a different phase-out rate is appropriate) for agricultural free allocation, in addition to advising on the timing for ending the suspension of the phase-out.**

Advice from the Commission on overall limits and price control settings for units

21. Under new section 30GC, clause 41 of the ETR Bill, when setting regulations for overall limits and price control settings for units, the Minister must consider a series of "main matters". One of the

¹ Note that the proposed amendments to section 3A would also insert a reference to section 225 (targets) and retain a reference to section 224 (gazetting of targets). Both section 224 and section 225 were repealed by the Climate Change Response (Zero Carbon) Amendment Act 2019.

main matters (section 30GC(5)(e)) is “any recommendations of the Climate Change Commission that are made after an emissions budget is first set, including any desirable carbon price path (if available).”

22. New section 30GC(8) has the effect of requiring the Minister to request the recommendations of the Commission for the purpose of section 30GC(5)(e), but only once an emissions budget has been set. We support this formulation in section 30GC(8) in relation to the Commission’s cyclical provision of advice specifically on the “main matters,” as it means that prior to 2022, we can remain fully focused on developing advice on the first three emissions budgets and on the direction of policy required in the first emissions reduction plan. The statutory deadline for providing this advice to the Minister is 1 February 2021.
23. The wording of the proposed new section 30GC(5)(e), however, appears to preclude the Minister’s consideration of the Commission’s advice on the first emissions budgets and emissions reduction plan, as this advice will be provided in early 2021 before an emissions budget is set later that year. This advice will be relevant for setting regulations about overall limits and price control settings for the NZ ETS, particularly because the Commission is required under the CCRA’s section 5ZA(c) to advise the Minister on “how the emissions budgets, and ultimately the 2050 target, may realistically be met, including by pricing and policy methods”. We think that this advice should be considered by the Minister as one of the main matters.
24. It would also be desirable for section 30GC(5)(e) to refer not to a “carbon price path” but to an “emissions price path”. This would avoid the possibility of confusion with the price of carbon outlined in the CCRA’s section 30W (Regulations setting the price of carbon) and avoid constraining the nature of the Commission’s advice in respect of the various greenhouse gases.
25. **We recommend amending section 30GC(5)(e) proposed in clause 41 of the ETR Bill as follows:**

“(e) any recommendations of the Climate Change Commission ~~that are made after an emissions budget is first set, including any desirable carbon~~ emissions price path (if available):”

Two policy issues not addressed by the ETR Bill

26. We wish to bring two policy gaps not addressed by the ETR Bill to the attention of the Environment Committee as areas for future consideration. These issues, relating to voluntary offsetting and forestry, are of strong interest to stakeholders and have the potential to impact on future unit supply and price management in the NZ ETS. They are also relevant for aspects of the Commission’s advice on the first emissions budgets and emissions reduction plan.
27. First, the ETR Bill does not address the potential for mechanisms after 2020 to enable voluntary offsetting of emissions by market participants through cancelling NZUs. Existing provisions in the CCRA enable NZUs to be cancelled in a way that avoids any associated emission reductions from being double-counted against New Zealand’s 2020 target. This mechanism is used by a range of entities for the purposes of offsetting emissions, including for the purposes of making “zero carbon” or “carbon neutral” claims.
28. This mechanism will cease to be available at the end of 2020, and it remains unclear whether after this date the Government intends to facilitate voluntary offsetting domestically through

the NZ ETS. At this time, we do not have a view on how this lack of clarity could be resolved but highlight it as an area of policy uncertainty.

29. The second policy gap relates to the extent to which New Zealand uses carbon dioxide removals from forestry to meet its emission reduction targets. We note that under the CCRA's section 5ZA(1)(d) the Commission must advise the Minister, in its advice on emissions budgets, on "the proportions of an emissions budget that will be met by domestic emissions reductions and domestic removals". Forestry is currently the key source of domestic carbon dioxide removals. Over the next year, we intend to undertake analysis and wide-ranging engagement and consultation to inform our advice on this point. We are not yet in a position to indicate what our advice might eventually be.
30. We note that both issues could have significant implications for meeting New Zealand's domestic and international obligations under the CCRA 2002 as well as for the proper functioning of the NZ ETS in the longer term.

Appendix: Commission members

Dr Rod Carr (Chairperson)

Dr Carr's PhD in insurance and risk management, alongside his work leading the University of Canterbury through the earthquake recovery period, are excellent background for the incredibly important work that needs to be done in leading climate change resilience and adaptation. Dr Carr has also served as Deputy Governor and Chair of the Reserve Bank, so has strong governance experience, which will be much needed as Chair of the Commission.

Ms Lisa Tumahai (Deputy Chairperson)

Ms Tumahai's prior experience as Deputy Chairperson of the ICCC will help bring continuity to the work of the Commission. Ms Tumahai is a leader within Ngāi Tahu and has a unique insight about how to mobilise an entity towards strategies and targets. Ms Tumahai also has established relationships with iwi and Māori and will help to ensure the broader Commission has a greater understanding of te ao Māori perspectives.

Dr Harry Clark

Dr Clark is an internationally recognised science leader in greenhouse gases research. He is well regarded in the primary sector both from a science and agri-business perspective. As a member of the ICCC, Dr Clark has been heavily involved in the delivery and oversight of reports and will bring a strong sense of continuity to the broader climate community and secretariat during the transition from the ICCC to the Commission.

Dr Judy Lawrence

Dr Lawrence is a thought leader with extensive international expertise in climate change adaptation. She has been involved in the Intergovernmental Panel on Climate Change (IPCC) and also has experience across local government, having been elected as a member of a regional council. Dr Lawrence will make a valuable contribution to the Commission, in particular by ensuring the Commission has both expertise in, and a focus on, climate change adaptation.

Ms Catherine Leining

Ms Leining is one of New Zealand's leading experts on climate change mitigation policy and has a strong understanding of the Emissions Trading Scheme (ETS). She is a genuine thought leader, as demonstrated by her role as a Policy Fellow at Motu. As a Commissioner, Ms Leining will help to ensure the Commission considers the broadest range of policy tools and mechanisms by which emissions reductions can be made.

Professor James Renwick

Professor Renwick is a leading climate scientist with a strong national and international reputation. His expertise in climate and atmospheric science is demonstrated by his appointment as a Lead

Author within the Intergovernmental Panel on Climate Change (IPCC). Professor Renwick is a true climate change leader and is comfortable leading large groups of technical contributors to consensus as well as engaging with a wide variety of stakeholders and groups.

Professor Nicola Shadbolt

Professor Shadbolt is a farmer and academic, who will bring an important mix of real-world business experience and research to the Commission. As the recently appointed Chairperson of Plant and Food Research and former Director of Fonterra Cooperative Group, Professor Shadbolt also offers a strong understanding of governance leadership. Her experience will assist the Commission to consider the contribution and effects that land use and land-use change might have in the reduction of emissions.

Contact details

The Climate Change Commission can be contacted via the email address:

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