Departmental Report on the
Climate Change Response (Zero Carbon)
Amendment Bill 2019

Prepared by the Ministry for the Environment

Confidential until the Bill is reported back to Parliament

September 2019
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<tr>
<td>BERG</td>
<td>Biological Emissions Reference Group</td>
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<tr>
<td>CCRA</td>
<td>Climate Change Response Act</td>
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<td>Commission</td>
<td>Climate Change Commission</td>
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<td>CRG</td>
<td>Community Resilience Group</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>EITE</td>
<td>Emissions-Intensive, Trade Exposed</td>
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<tr>
<td>FOMA</td>
<td>Federation of Māori Authorities</td>
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<tr>
<td>GHG</td>
<td>Greenhouse Gas</td>
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<tr>
<td>IAS</td>
<td>International Aviation and Shipping</td>
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<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>LDAC</td>
<td>Legislation Design and Advisory Committee</td>
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<tr>
<td>LGA</td>
<td>Local Government Act</td>
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<tr>
<td>LULUCF</td>
<td>Land-Use, Land-Use Change and Forestry</td>
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<tr>
<td>NAP</td>
<td>National Adaptation Plan</td>
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<tr>
<td>NCCRA</td>
<td>National Climate Change Risk Assessment</td>
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<td>NDC</td>
<td>Nationally Determined Contributions</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NZ ETS</td>
<td>New Zealand Emissions Trading Scheme</td>
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<td>NZMC</td>
<td>New Zealand Māori Council</td>
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<td>PCE</td>
<td>Parliamentary Commissioner for the Environment</td>
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<td>RMA</td>
<td>Resource Management Act</td>
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<td>TCFD</td>
<td>Task Force on Climate-related Financial Disclosures</td>
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<tr>
<td>The Bill</td>
<td>Climate Change Response (Zero Carbon) Amendment Bill</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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## Summary of recommendations

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<tr>
<td>1</td>
<td>Title</td>
<td>2.1</td>
<td>Proceed with clause 1 with no change.</td>
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<tr>
<td>2</td>
<td>Commencement</td>
<td>2.2</td>
<td>Proceed with clause 2 with no change.</td>
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<td>3</td>
<td>Principal Act</td>
<td>2.3</td>
<td>Proceed with clause 3 with no change.</td>
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<td>4</td>
<td>Additional purpose</td>
<td>2.4</td>
<td>Proceed with clause 4 with an amendment to—&lt;br&gt;• reflect the Bill’s requirements to plan for adapting to the effects of a changing climate.</td>
<td>Including climate change adaptation in the purpose of the Bill 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.</td>
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<td>5</td>
<td>Giving effect to Treaty of Waitangi (Te Tiriti o Waitangi)</td>
<td>2.5</td>
<td>Proceed with clause 5 with no change.</td>
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<td>6</td>
<td>Additional definitions of terms</td>
<td>2.6</td>
<td>Proceed with clause 6 with amendments to—&lt;br&gt;• amend the definition of the New Zealand GHG Inventory to reference existing statutory provisions for the preparation of that report&lt;br&gt;• add a term “net accounting emissions” to replace the existing terms “net emissions” (at clause 6) and “net budget emissions” (at clause 8, new section 5S).</td>
<td>More properly incorporates by reference the sector definitions used for the purpose of inventory reporting. “Net accounting emissions” includes gross emissions, emissions and removals from the land-use, land-use change and forestry (LULUCF) sector, and offshore mitigation. It is recommended that this measure is used to account for both emissions budgets and the 2050 target, subject to constraints set out in the Bill.</td>
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<td>7</td>
<td>Addition of section giving effect to transitional, savings and related provisions</td>
<td>2.7</td>
<td>Proceed with clause 7 with no change.</td>
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<td>8</td>
<td></td>
<td>Addition of Parts 1A to 1C into principal Act</td>
<td>3, 4 and 5</td>
<td>Recommendations by section as described below.</td>
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<td><strong>Part 1A Climate Change Commission (Commission)</strong></td>
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<td>5A</td>
<td></td>
<td>Establishes the Commission</td>
<td>3.1</td>
<td>Proceed with the insertion of new section 5A with no change.</td>
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</table>
| 5B     |         | Purposes of the Commission | 3.1 | Proceed with the insertion of new section 5B with a minor amendment to—  
- clarify that advice to Government should be on “mitigating climate change” rather than “mitigating the effects of climate change”. | Drafting change recommended for clarity. |
<p>| 5C     |         | Commission is a Crown entity | 3.1 | Proceed with the insertion of new section 5C with no change. | |
| 5D     |         | Commission must have 7 members | 3.1 | Proceed with the insertion of new section 5D with no change. | |
| 5E     |         | Process for appointment of Commission members | 3.1 | Proceed with the insertion of new section 5E with no change. | |
| 5F     |         | Requirement to establish nominating committee | 3.1 | Proceed with the insertion of new section 5F with no change. | |
| 5G     |         | Process of nominating committee | 3.1 | Proceed with the insertion of new section 5G with no change. | |</p>
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<td>SH</td>
<td>5H</td>
<td>Matters Minister must have regard to before appointing members of Commission</td>
<td>3.1</td>
<td>Proceed with the insertion of new section 5H with no change.</td>
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<td>SI</td>
<td>5I</td>
<td>Commission members’ terms of office</td>
<td>3.1</td>
<td>Proceed with the insertion of new section 5I with no change.</td>
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<td>SJ</td>
<td>5J</td>
<td>Functions of the Commission</td>
<td>3.2</td>
<td>Proceed with the insertion of new section 5J with no change.</td>
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<td>SK</td>
<td>5K</td>
<td>Minister may request Commission prepare reports</td>
<td>3.2 and 7.2</td>
<td>Proceed with the insertion of new section 5K with amendments to— • require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament • require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.</td>
<td>Shortens publication and tabling timeframes for improved transparency and consistency. The process is similar to the process for tabling and publication of annual reports under the Crown Entities Act, with slightly longer timeframes in the Bill to allow for preparation for publication.</td>
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<tr>
<td>SL</td>
<td>5L</td>
<td>Matters Commission must consider</td>
<td>3.2</td>
<td>Proceed with the insertion of new section 5L with an amendment to— • require that when performing its functions and duties and exercising its powers under the Bill, the Commission must have regard to the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori.</td>
<td>Strengthens consideration of these matters in the Commission’s performance of its functions.</td>
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<tr>
<td>SM</td>
<td>5M</td>
<td>Commission may undertake consultation</td>
<td>3.2</td>
<td>Proceed with the insertion of new section 5M, with an amendment to— • add a requirement that, in the performance of its functions, the Commission must— o proactively engage with persons the Commission considers relevant to its functions</td>
<td>Provides for more thorough engagement across the Commission’s functions. Replaces process-based consultation requirements in relation to an emissions-reduction plan, to allow more flexibility in the approach to engagement on that advice.</td>
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<td>SN</td>
<td>Commission must act independently</td>
<td>3.2</td>
<td>Proceed with the insertion of new section SN with no change.</td>
<td>Allows the Commission to exercise the adaptation reporting power to support production of the National Climate Change Risk Assessment (NCCRA) and adaptation monitoring reports. Note that existing sections of the CCRA will give the Commission power to request information from others with functions under the CCRA, such as the NZ ETS Registrar and the inventory agency for GHGs.</td>
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</table>
| no section | Commission’s power to request information | 7.1 | Include in the Bill amendments to—  
- extend to the Commission the power to request information about climate change adaptation from the reporting organisations listed in new section 5ZV of the Bill. | |
| Part 1B Emission reduction | 4 | Proceed with the insertion of new section 5O with amendments to—  
- provide for the 2030 component of the biogenic methane target to be met if emissions of biogenic methane are 10% or more below 2017 levels by 2030  
- provide for the 2050 component of all other GHGs (except biogenic methane) component of the 2050 target to be met if emissions are no greater than net zero by 2050  
- provide for offshore mitigation and other removals (e.g., carbon capture and storage) to be counted towards the net zero part of the 2050 target. | Ensures that the 2030 target component for biogenic methane, and the net zero component of the target are met if emissions are less than the specified level (as opposed to exactly the specified level).  
Offshore mitigation is an important flexibility mechanism in achieving the 2050 target. |
| SP     | Commission must review 2050 target | 4.1 and 7.2 | Proceed with the insertion of new section 5P with amendments to—  
- require the Commission to advise on if, and if so how, emissions from international shipping and aviation should be included in the 2050 target and emissions budgets as part of its target review in 2024 | We do not recommend including emissions from international aviation and shipping (IAS) within the 2050 target or emissions budgets now because these emissions are not included in New Zealand’s (and most other countries’) national GHG emissions totals, and |

where the Commission considers relevant, provide for public participation in order to assist the preparation of advice.
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<td>require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</td>
<td>internationally are managed through the ICAO and the IMO. IAS emissions are important to consider as part of New Zealand’s climate change strategy, so the Commission should advise on whether, and if so how, these should be included in the Bill’s target and emissions budgets as part of its 2024 target review. This will allow time for further consideration of the accounting treatment of these emissions (including interactions with international mechanisms), the availability of tools for domestic abatement, and the potential economic implications of including IAS emissions in the target and emissions budgets.</td>
</tr>
<tr>
<td>SQ</td>
<td></td>
<td>Commission may recommend a change to 2050 target</td>
<td>4.1</td>
<td>Proceed with the insertion of new section SQ with an amendment to—&lt;ul&gt;&lt;li&gt;allow for the Commission to consider the form of the target in its reviews, including:&lt;ul&gt;&lt;li&gt;what the target should be (including the types, sources and sinks of GHGs it applies to)&lt;li&gt;how the target should be met (including through reductions, removals and offshore mitigation)&lt;/li&gt;&lt;/ul&gt;&lt;/li&gt;&lt;/ul&gt;</td>
<td>Submitters raised concerns about the extent to which forestry offsets may be used, and the potential for this to delay emissions reductions in some sectors or to impact communities in negative ways. This change allows the Commission to consider, as part of target reviews, these and other matters relevant to the form of the target, to ensure the target remains fit for purpose.</td>
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<tr>
<td>SR</td>
<td></td>
<td>Minister must respond to a recommendation to change 2050 target</td>
<td>4.1 and 7.2</td>
<td>Proceed with the insertion of new section SR with an amendment to—&lt;ul&gt;&lt;li&gt;require the Government’s response to give reasons for any departure from the Commission’s recommendations and for the response to be published. &lt;/li&gt;&lt;/ul&gt;</td>
<td>Provides for more consistent transparency measures across Government responses to Commission advice.</td>
</tr>
<tr>
<td>SS</td>
<td></td>
<td>Definitions that apply to emissions budgets sections</td>
<td>4.2</td>
<td>Proceed with the insertion of new section SS with amendments to—&lt;ul&gt;&lt;li&gt;remove the definition of “net budget emissions” (and replace with a different term at clause 6(1)).&lt;/li&gt;&lt;/ul&gt;</td>
<td>Offshore mitigation can be used to meet the net zero component of the target and emissions budgets. There is no need for separate definitions for “net emissions” and “net budget emissions”.</td>
</tr>
<tr>
<td>ST</td>
<td></td>
<td>Purpose of setting emissions budgets</td>
<td>4.2</td>
<td>Proceed with the insertion of new section ST with amendments to-</td>
<td>These changes will strengthen the need to consider the global response to climate change and the 1.5°C temperature goal when setting emissions budgets.</td>
</tr>
<tr>
<td>Clause</td>
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<tr>
<td>SU</td>
<td>Emissions budgets must be set</td>
<td>4.2</td>
<td>Proceed with the insertion of new section SU with no change.</td>
<td>They will also prioritise domestic emissions reductions, rather than delaying action, and clarify that emissions budgets should be met through domestic abatement.</td>
<td></td>
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<tr>
<td>SV</td>
<td>Contents of emissions budgets</td>
<td>4.2</td>
<td>Proceed with the insertion of new section SV with no change.</td>
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</table>
| SW     | Emissions budgets to be met through domestic emissions reductions and removals as far as possible | 4.2 | Proceed with the insertion of new section SW with an amendment to—  
- clarify that offshore mitigation can only be used if unforeseen circumstances affect New Zealand’s ability to meet emissions budgets domestically. | This change emphasises the domestic focus of emissions budgets, and clarifies the circumstances in which offshore mitigation can be used to meet an emissions budget. |
| SX     | Commission to advise Minister on setting emissions budgets | 4.3 | Proceed with the insertion of new section SX with amendments to—  
- rename the title of Subpart 3 to reflect the fact that the Commission’s role is advisory only and it will not set emissions budgets  
- require that, when advising on the amount of offshore mitigation that may be used to meet an emissions budget, the Commission must also have regard to the need to set emissions budgets that can be met domestically (proposed amendment to new section ST) and the circumstances in which offshore mitigation can be used (proposed amendment to new section SW) | Makes consultation requirements in respect of an emissions budget clearer.  
Ensures Commission will have regard to the domestic focus of emissions budgets and purpose of offshore mitigation when advising on emissions budgets.  
Shortens publication and tabling timeframes for improved transparency and consistency. |
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</thead>
</table>
| SY     |         | Minister must respond to Commission’s advice | 4.3     | Proceed with the insertion of new section SY with an amendment to—  
  • require that, before setting an emissions budget, the Minister must be satisfied that adequate consultation has occurred (and if not must notify a proposal, allow adequate time for views to be heard, and consider matters raised in consultation)  
  • require that the Government’s response to the Commission’s advice is published. | Makes consultation requirements in respect of an emissions budget clearer. Publication requirement provides for more consistent transparency measures across Government responses to Commission advice. |
| SZ     |         | Matters Commission and Minister must have regard to in setting emissions budgets | 4.3     | Proceed with the insertion of new section SZ with an amendment to—  
  • add a requirement for the Commission and the Minister to have regard to the potential implications of land use changes for communities. | This change recognises the risks associated with land use change and in particular recognises submitter concerns about how forestry could affect communities. |
<p>| SZA    |         | Consultation and publication of emissions budgets | 4.3     | Proceed with the insertion of new section SZA with no change. | |</p>
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<tr>
<td>5ZB</td>
<td>Emissions budgets may be revised</td>
<td>4.3</td>
<td>Proceed with the insertion of new section 5ZB with amendments to—&lt;br&gt;- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.&lt;br&gt;- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.</td>
<td>Shortens publication and tabling timeframes for improved transparency and consistency.</td>
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<tr>
<td>5ZC</td>
<td>Banking and borrowing emissions reductions</td>
<td>4.3</td>
<td>Proceed with the insertion of new section 5ZC with amendments to—&lt;br&gt;- clarify the impact that banking will have on the subsequent emissions budget by providing that the amount of the emissions budget for the next emissions budget period will be increased by the amount carried forward, making the next emissions budget easier to meet&lt;br&gt;- clarify the impact that borrowing will have on the subsequent emissions budget by providing that that borrowing will decrease the amount of emissions permitted in the subsequent emissions budget by up to 1%, making it more difficult to meet.</td>
<td>These changes will make it easier to understand the implications of banking and borrowing on the next emissions budget period and, in doing so, more closely resemble the UK Climate Change Act 2008.</td>
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<tr>
<td>5ZD</td>
<td>Minister must prepare a plan for meeting emissions budgets</td>
<td>4.3</td>
<td>Proceed with the insertion of new section 5ZD with no change.</td>
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<tr>
<td>5ZE</td>
<td>Commission to advise Minister on policies to meet emissions budgets</td>
<td>4.3</td>
<td>Proceed with the insertion of new section 5ZE with amendments to—&lt;br&gt;- require the Commission to provide its advice on the high-level direction of policy 24 months before the beginning of the period&lt;br&gt;- remove requirements for consultation by the Commission (in subsection (3)(a))</td>
<td>Provides for Commission advice on the high-level direction of policy to be considered in Government, in time for the emissions reduction plan to be published 12 months ahead of the beginning of the emissions budget period.</td>
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<td>• require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</td>
<td>Consultation requirements are replaced by engagement and participation principles at new section 5M. Shortens publication and tabling timeframes for improved transparency and consistency.</td>
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<td>• require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.</td>
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<tr>
<td>SZF</td>
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<td>Minister to publish plan for emissions budget period</td>
<td>4.3 and 7.2</td>
<td>Proceed with the insertion of new section SZF with amendments to— • require the responsible Minister to publish emissions reduction plans 12 months ahead of the beginning of the relevant emissions budget period • require that a copy of each emissions reduction plan is presented to the House of Representatives.</td>
<td>Publishing an emissions reduction plan 12 months ahead of a budget period beginning will provide businesses, investors, and individuals more certainty about the policy measures that will be put in place and allow them to plan ahead. Tabling requirement provides for more consistent transparency measures across Government responses to Commission advice.</td>
</tr>
<tr>
<td>SZF</td>
<td></td>
<td>Commission to monitor progress towards meeting emissions budgets</td>
<td>4.4</td>
<td>Proceed with the insertion of new section SZF with no change.</td>
<td>These changes provide the Commission and the Minister with more time to respectively prepare and respond to annual monitoring reports. The UK Committee on Climate Change recommended allowing more time for these reports. They also shorten publication and tabling timeframes for improved transparency and consistency.</td>
</tr>
<tr>
<td>SZH</td>
<td></td>
<td>Commission to report annually on results of monitoring</td>
<td>4.4 and 7.2</td>
<td>Proceed with the insertion of new section SZH with amendments to— • change the timeframe for the Commission to provide its emissions-reduction monitoring report to three (rather than two) months following the publication of a National GHG Inventory report • change the timeframe for the Minister to present a written response to the House of Representatives to three (rather than two) months after the Commission provides its annual monitoring report • require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</td>
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Departmental Report on the Climate Change (Zero Carbon) Amendment Bill 2019
<table>
<thead>
<tr>
<th>Clause</th>
<th>Section</th>
<th>Description</th>
<th>Chapter</th>
<th>Recommendations</th>
<th>Rationale</th>
</tr>
</thead>
</table>
| SZI    |         | Commission to report at end of emissions budget period | 4.4     | Proceed with the insertion of new section SZI with amendments to—  
- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament  
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister  
- require that the Minister’s response to the Commission’s report must be published and give reasons for any departures from the Commission’s recommendations. | Shortens publication and tabling timeframes for improved transparency and consistency.  
Provides for more consistent transparency measures across Government responses to Commission advice. |
| SZJ    |         | Excludes court remedies for breach of 2050 target or emissions budget other than a declaration | 4.5     | Proceed with the insertion of new section SZJ with no change. | - |
| SZK    |         | 2050 target and emissions budgets may influence broader | 4.5     | Proceed with the insertion of new section SZK with an amendment to—  
- remove clause SZK(2), which is the clause providing that a failure by any person or body to take the 2050 target, an | - |

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<table>
<thead>
<tr>
<th>Clause</th>
<th>Section</th>
<th>Description</th>
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<th>Recommendations</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Government decision making</td>
<td></td>
<td>emissions budget, or guidance issued under section 5ZL into account does not invalidate anything done by that person or body.</td>
<td>restrictions on how the common law on the status of the target and emissions budgets might develop in future.</td>
</tr>
<tr>
<td>S5L</td>
<td></td>
<td>Minister may issue guidance for departments on how to take 2050 target and emissions budgets into account in decision making</td>
<td>4.5</td>
<td>Proceed with the insertion of new section 5ZL with no change.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Requires a NCCRA</td>
<td>5.1</td>
<td>Proceed with the insertion of new section 5ZM with no change.</td>
<td></td>
</tr>
<tr>
<td>S5N</td>
<td></td>
<td>Commission must prepare NCCRA</td>
<td>5.1</td>
<td>Proceed with the insertion of new section 5ZN with a minor amendment to— • reflect the intent of risk assessments taking into account current and future climate change risks (at 5ZN(2)(e)).</td>
<td>Drafting change recommended for clarity.</td>
</tr>
<tr>
<td>S5O</td>
<td></td>
<td>Risk assessment to be presented to Parliament and made publicly available</td>
<td>5.1 and 7.2</td>
<td>Proceed with the insertion of new section 5ZO with amendments to— • require that the Minister must present a copy of the Commission’s assessment to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament. • require that the Commission must publish the assessment, along with any evidence commissioned to support its preparation, as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.</td>
<td>Shortens publication and tabling timeframes for improved transparency and consistency.</td>
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<tr>
<td>Clause</td>
<td>Section</td>
<td>Description</td>
<td>Chapter</td>
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<tr>
<td>SZP</td>
<td></td>
<td>Minister to prepare first NCCRA</td>
<td>5.1</td>
<td>Proceed with the insertion of new section SZP with no change.</td>
<td></td>
</tr>
<tr>
<td>SZQ</td>
<td></td>
<td>Minister must prepare national adaptation plan (NAP) in response to NCCRA</td>
<td>5.2 and 7.2</td>
<td>Proceed with the insertion of new section SZQ with no change.</td>
<td></td>
</tr>
<tr>
<td>SZR</td>
<td></td>
<td>NAP to be presented to Parliament and made publicly available</td>
<td>5.2</td>
<td>Proceed with the insertion of new section SZR with no change.</td>
<td></td>
</tr>
<tr>
<td>SZS</td>
<td></td>
<td>Commission to produce progress reports on the implementation of the adaptation plan</td>
<td>5.2</td>
<td>Proceed with the insertion of new section SZS with no change.</td>
<td></td>
</tr>
<tr>
<td>SZT</td>
<td></td>
<td>Progress report to be presented to Parliament and made publicly available</td>
<td>5.2 and 7.2</td>
<td>Proceed with the insertion of new section SZT with amendments to—</td>
<td>Shortens publication and tabling timeframes for improved transparency and consistency.</td>
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<td></td>
<td>• require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</td>
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<td></td>
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<td></td>
<td>• require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.</td>
<td></td>
</tr>
<tr>
<td>SZU</td>
<td></td>
<td>Minister must respond to progress report</td>
<td>5.2 and 7.2</td>
<td>Proceed with the insertion of new section SZU, with an amendment to—</td>
<td>Tabling requirement provides for more consistent transparency measures across Government responses to Commission advice.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>• require the Minister to present a copy of the response to the House of Representatives.</td>
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<tr>
<td>Clause</td>
<td>Section</td>
<td>Description</td>
<td>Chapter</td>
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<tr>
<td>5ZV</td>
<td></td>
<td>Minister may request certain organisations to provide information on effects of climate change on the organisation and how it will adapt to those effects</td>
<td>5.3</td>
<td>Proceed with the insertion of new section 5ZV with an amendment to—&lt;br&gt;• require that the Minister and Commission cannot publicly disclose information obtained through their adaptation reporting powers (unless it is already in the public domain), except—&lt;br&gt;  o if non-disclosure would materially limit the Minister or the Commission’s ability to undertake adaptation functions under the Bill, and&lt;br&gt;  o following consultation with the person or organisation to whom the information is confidential&lt;br&gt;• align the language in new section 5ZV(1)(b) and (c) with the four areas covered by the Task Force on Climate-Related Financial Disclosures (TCFD) framework: governance, strategy, risk management, and metrics and targets.</td>
<td>Provides a safeguard on the disclosure of sensitive information, to support the adaptation reporting power.&lt;br&gt;Improves alignment with existing reporting frameworks to mitigate the risk of duplication/reporting inefficiencies.</td>
</tr>
<tr>
<td>5ZW</td>
<td></td>
<td>Regulations may be made specifying matters relating to information requests</td>
<td>5.3</td>
<td>Proceed with the insertion of new section 5ZW with no change.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Addition of Schedule 1AA containing transitional, savings and related provisions</td>
<td>2.7</td>
<td>Proceed with clause 9 with a minor amendment to—&lt;br&gt;• make it clear that clause 3 of new Schedule 1AA is subject to clause 14 of the Bill (which revokes the target gazetted in 2011), and that any other target set pursuant to section 224 continues in force and may still be amended or revoked.</td>
<td>Drafting change recommended for clarity.</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>The Commission and confidential information</td>
<td>6.1</td>
<td>Proceed with clause 10 with an amendment to—&lt;br&gt;• narrow the scope of the obligation of confidentiality such that it only maintains the confidentiality of information that was already confidential under section 99.</td>
<td>Corrects an error in the application of confidentiality obligations.</td>
</tr>
<tr>
<td>Clause</td>
<td>Section</td>
<td>Description</td>
<td>Chapter</td>
<td>Recommendations</td>
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</table>
| 11     |         | Clarifies that targets in the section do not include targets for GHG emissions | 6.1     | Proceed with clause 11 with an amendment to—  
  - repeal section 224 entirely. | Removes (rather than amends) a section that provided for the setting of targets by Gazette notice, which is no longer needed. |
| 12     |         | Repeals section allowing for regulations to be made setting targets | 6.1     | Proceed with clause 12 with no change. | |
| 13     |         | Consequential amendments to other enactments contained in Schedule 2 | 6.1     | Proceed with clause 13 and Schedule 2 with an amendment to—  
  - add the members of the Commission to the list in Schedule 4 of the Remuneration Authority Act 1977. | Drafting change recommended for clarity. |
| 14     |         | Revokes Climate Change Response (2050 Emissions Target) Notice 2011 | 6.1     | Proceed with clause 14 with no change. | |
1 Introduction

This Departmental Report (the report) is based on consideration of the submissions made on the Climate Change Response (Zero Carbon) Amendment Bill (the Bill) received by the Environment Committee (the Select Committee, or the Committee). The report presents a clause-by-clause summary of submitters’ comments, and the Ministry for the Environment’s (MfE, or the Ministry) recommendations on amendments to the Bill.

The recommendations on amendments to the Bill are subject to Parliamentary Counsel’s discretion concerning how best to express each recommendation in legislation. In addition, Parliamentary Counsel may recommend additional amendments to the Bill that are a consequence of implementing the recommendations by officials, that are necessary for overall coherence of the legislation, or where it has identified a required editorial change (e.g., to correct punctuation, spelling and typographical errors).

Selected quotes from submissions have been included in this report. They have been selected for their value in illustrating issues raised by submitters, or because they articulate issues in a way that is difficult to paraphrase without losing the original meaning. Their inclusion in this document does not imply that they are weighed over and above submissions that have not been cited specifically.

1.1 Report structure

Chapter 1 (this chapter) provides a brief background on the Bill and an overview of the written submissions, including the number of submissions, general stance of submitters, and the key issues raised.

Chapters 2-6 provide the clause-by-clause summary of submissions, analysis and recommendations. This analysis is organised according to the following parts of the Bill:

- **Chapter 2** addresses *Introductory, transitional and consequential amendment provisions* and covers:
  - Purpose, Treaty of Waitangi (Te Tiriti o Waitangi), Interpretation
  - Transitional, savings and related provisions

- **Chapter 3** addresses *Climate Change Commission (Commission) provisions* and covers:
  - Establishment and appointments
  - Commission’s functions, duties and powers

- **Chapter 4** addresses *Emission reduction provisions* and covers:
  - 2050 target
  - Setting emissions budgets
  - Role of Commission in setting emissions budgets
  - Monitoring
  - Effect of 2050 target and emissions budgets

- **Chapter 5** addresses *Adaptation provisions* and covers:
  - National climate change risk assessment (NCCRA)
  - National adaptation plan (NAP) and progress reports
  - Power to request information
• **Chapter 6** addresses **Consequential amendments provisions** and covers:
  o Obligation to maintain confidentiality
  o Gazetting of targets
  o Regulations relating to targets
  o Amendments to other enactments
  o 2050 Emissions Target Notice revocation

• **Chapter 7** covers recommendations in relation to matters that either were not reflected in an existing section of the Bill, or relate to a number of provisions throughout the Bill:
  o Commission's powers and funding
  o Transparency measures - reports and responses
  o International aviation and shipping (IAS) emissions

• **Chapter 8** discusses other issues raised by submitters that fall outside the scope of the Bill as currently drafted:
  o Declaring a climate emergency
  o Climate change and human mobility
  o Carbon price, carbon tax, carbon credits
  o Science and research
  o Resource Management Act (RMA) and other legislation
  o Other actions Government should be taking (transport, waste, alternative fuels).

### 1.2 Broader context of the Bill

This Government is committed to taking decisive action on climate change to build a more sustainable economy that is not only better for the environment, but creates jobs and helps to improve the lives of all New Zealanders. We also want to show global leadership by demonstrating that New Zealand can be better off while taking action to reduce our impact on the climate.

New Zealand is committed to the Paris Agreement, which aims, *inter alia*, to:

a) hold the increase in the global average temperature to well below 2 °C above preindustrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

b) increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG (GHG) emissions development, in a manner that does not threaten food production.

The Intergovernmental Panel on Climate Change’s (IPCC) *Special Report on Global Warming of 1.5 °C* notes anthropogenic global warming is likely to reach 1.5 °C above pre-industrial levels between 2030 and 2052 if it continues to increase at the current rate. This scenario poses climate-related risks to natural and human systems – including sea-level rise, ocean acidification, biodiversity loss and species extinction, extreme heat and increased probability of drought and precipitation extremes – but lower relative to a 2 °C scenario. The Special Report highlights that pathways limiting global warming to 1.5 °C (with limited or no overshoot) would require rapid and far-reaching transitions in energy, land, urban and infrastructure, including transport and buildings, and industrial systems.¹

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¹ IPCC. 2018. Released 8 October 2018.
New Zealand already has a legal and policy framework in place to address climate change, including the Climate Change Response Act (CCRA) 2002, which, *inter alia*, established the national GHG inventory agency and, through an amendment in 2008, the New Zealand Emissions Trading Scheme (NZ ETS). A 2050 emissions reduction target was also notified in the New Zealand Gazette in 2011.2

Despite this, New Zealand’s GHG emissions have increased substantially on 1990 levels. The existing framework has fallen short of providing a stable and credible policy environment to enable necessary long-term planning, decision-making and investment by the private sector and civil society.

The Bill is intended to set a stable and enduring institutional framework for climate change action that will help keep New Zealand on track to mitigate emissions and adapt to the impacts of climate change. It is designed to provide certainty by sending a clear signal about New Zealand’s long-term emissions reduction goals and guide New Zealand’s transition to a low emissions and climate resilient economy over the next thirty years.

The Bill seeks to balance certainty about the transition we are making, against flexibility to respond to changes that will emerge as we progress towards the goals in the Bill. It is impossible to have a clear view now on what New Zealand and the world will look like in 2050. Changes will emerge across technology, our economy and society, the international response to climate change, and climate science that could shape the transition.

Given this uncertainty, New Zealanders need clarity about the transition pathway, so that they can make confident, informed decisions that will help reduce our GHG emissions and increase our resilience to climate change.

The framework in the Bill strikes this balance by providing for:

- An emissions reduction target to provide clarity about New Zealand’s ambition to reduce emissions. The target is made up of two components:
  - A reduction in emissions of biogenic methane of 24 to 47% below 2017 levels by 2050, and 10% by 2030
  - Net zero emissions of all other GHGs by 2050.
- A system of emissions budgets to step towards the emissions reduction target. The emissions budgets will set the overall quantity of emissions permitted over each five-year budget period. They will provide certainty in the medium term about the pathway New Zealand is taking towards the emissions reduction target.
- A Commission to provide expert advice and monitoring to hold successive Governments accountable for progress towards the long-term goals.
- A range of adaptation measures to make sure we understand, and respond to, the risks posed by climate change impacts.

The Bill also provides for regular and careful consideration of economic effects of the transition, and how these are distributed across the economy and society:

- Firstly, economic effects are considered by the Commission in all of its advice
- Secondly, economic and distributional impacts are explicit considerations for the Government in setting emissions budgets and the NAP

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2 To reduce GHG emissions below 50 percent of 1990 levels by 2050.
Lastly, significant changes in economic effects or their distribution can be a reason for the Commission to recommend a change to the target.

The framework retains the ability for Governments to determine the specific policies implemented to respond to climate change, and does not specify the policies that will be used to reduce emissions. The requirement for emissions reduction plans to be published by Government (established under the Bill) will be central to this process.

Together, the elements of the framework provide a robust system to enable the Government’s policy response to addressing climate change to develop in a transparent and credible way.

1.3 Overview of written submissions

The Bill was introduced to the House on 8 May 2019 and had its first reading on 21 May. Public submissions opened on 23 May and closed 16 July. A total of approximately 10,000 written submissions were received, the vast majority of which were from individuals. A significant number (37%) of submitters used a form submission. 28% of all submissions were based on Generation Zero forms and 3% based on School Strike 4 Climate forms.

A full list of submitters is can be found at https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_87861/tab/submissionsandadvice. Table 1 below sets out the makeup of submissions by category.

Table 1: Total and percentage of submitters by category

<table>
<thead>
<tr>
<th>Submitter type</th>
<th>Support / support in part</th>
<th>Oppose / oppose in part</th>
<th>Unclear / unstated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>82%</td>
<td>8%</td>
<td>10%</td>
</tr>
<tr>
<td>Government</td>
<td>97%</td>
<td>0%</td>
<td>3%</td>
</tr>
<tr>
<td>Business / Industry</td>
<td>74%</td>
<td>16%</td>
<td>10%</td>
</tr>
<tr>
<td>Community group / NGO</td>
<td>87%</td>
<td>4%</td>
<td>9%</td>
</tr>
<tr>
<td>University / Research institute</td>
<td>88%</td>
<td>8%</td>
<td>4%</td>
</tr>
<tr>
<td>Iwi/Māori</td>
<td>96%</td>
<td>0%</td>
<td>4%</td>
</tr>
<tr>
<td>School / Unspecified / Other</td>
<td>81%</td>
<td>34%</td>
<td>8%</td>
</tr>
</tbody>
</table>

1.4 General stance of submitters

Of the 10,023 written submissions, approximately 82% were in overall support of the Bill (including those that gave conditional support) and 8% were in opposition. A small proportion 10% did not state whether or not they supported the Bill, or were unclear.

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3 These categories are based on officials’ assessment of each submission. In some cases it may not be clear from the submission which category is relevant and in some cases more than one category may be relevant. As a result, these estimates should be treated as indicative only.
1.5 Addendum to this report

The hearing of oral submissions began on 25 July and will conclude on 9 September 2019. A small number of written submissions took longer to be processed and provided to advisers.

An addendum to this report will consider both the oral and additional written submissions. The Addendum will be provided to the Select Committee on 13 September.

1.6 Key issues

Officials have read and considered the arguments set out in the written submissions received. Analysis and recommendations on points raised in submissions are contained within this report. Key issues raised by submitters are outlined below.

Purpose

A majority of submitters supported embedding the Paris Agreement’s 1.5 °Celsius goal in legislation. Many submitters also called for climate change adaptation to be included in the purpose of the Bill.

Treaty of Waitangi (Te Tiriti o Waitangi)

Many submitters called for greater recognition of Te Tiriti and the Treaty partnership in the Bill, commenting on the specific Treaty clause, representation on the Commission, and matters the Commission and Minister must consider in recommending and developing budgets and plans.

Climate Change Commission

Submitters generally supported the establishment of an independent Commission to provide advice and monitor progress. Common suggestions related to enhancing the independence of the Commission, for example, by providing for the Commission to report to Parliament rather than the Executive and to safeguard its funding. Submitters also requested the Commission have greater power, for example, by making binding recommendations or having enforcement powers.

A large number of submitters commented on the importance of the Commission considering matters of interest to iwi/Māori in its work, including suggesting strengthened provisions for ensuring the Commission has appropriate expertise or representation.

Many submitters also suggested additional expertise for the Commissioners.

Emissions reduction target

Most submitters (including 59 per cent of organisations that expressed a view) support separate targets for biogenic methane and all other gases.

In general, submitters supported a net zero target for all gases other than biogenic methane. Many submitters noted the need to act with urgency, and some requested an earlier date for reaching net zero emissions.

Some submitters suggested gross reductions for GHGs other than biogenic methane to provide certainty about the required reductions. Some submitters proposed setting an interim 2030 target for all other GHGs, in line with the IPCC’s findings in model pathways with no or limited overshoot of 1.5 °C, global net anthropogenic CO2 emissions decline by about 45% from 2010 levels by 2030 (40–60% interquartile range), Submitters expressed a wide range of views on the level of the biogenic methane component of the target. Some submitters requested more ambitious reductions (eg, the top end of the range in the Bill, or...
a 47% reduction by 2050). Others proposed less ambitious reductions in the range of 10% to 24% by 2050. Some submitters proposed removing the 2030 target for biogenic methane. Some submitters suggested net reductions for methane emissions so farmers could offset their emissions with tree planting.

Some submitters suggested allowing the Commission to advise on the target, or aspects of it, before it is set, rather than including it in legislation now. This view was most frequently raised in relation to the 2050 target for biogenic methane.

A commonly held view by NGOs and individuals was that emissions from IAS should be included in the 2050 target.

**Emissions budgets and plans**
Submitters did not comment extensively on emissions budgets but those who did generally supported establishing a system of emissions budgets. Some submitters requested the Commission set emissions budgets instead of the Minister.

Submitters also made suggestions for additional matters (eg, international competitiveness, carbon leakage and greater consideration of te ao Māori and te Tiriti o Waitangi) to be considered by the Commission in setting budgets.

Submitters supported the requirement for the Minister to develop plans to meet emissions budgets, although many requested a specific timeframe be set for the plans to be developed.

**Meeting emissions reduction targets and emissions budgets**
A large number of submitters sought further clarification on when offshore mitigation can be used, and around half of submitters also requested that offshore mitigation be prohibited.

**Effect of the 2050 target and emissions budgets**
Many submitters requested stronger enforceability and accountability in the event of failure to meet emissions budgets and the 2050 target. Some submitters proposed removing the limitation on the remedies available to the courts and making the emissions budgets and targets mandatory rather than permissive considerations for decision-makers under other enactments.

**Adaptation**
Submitters were largely in support of the adaptation provisions.

A general theme of the submissions was the need for local Government and others (eg, infrastructure and essential service providers, iwi/Māori, and community groups) to play a key role in adaptation planning, with support from central Government. In particular, local Government sought greater clarification on how the NAP would be implemented and whether and how it would relate to existing regulatory frameworks (eg, provisions in the Resource Management Act 1991, (RMA)).

Some submitters called for iwi/Māori rights and interests to be reflected more strongly in the adaptation risk assessment, and for greater consultation/partnership opportunities with the Crown.

Submitters were generally in favour of an information gathering power for adaptation risk assessment and planning, as long as care is taken to ensure it does not over-burden reporting organisations or unnecessarily duplicate other reporting. Some submitters requested the information gathering power be
broadened to cover a wider range of organisations, be strengthened by including an offence or penalty power to support compliance, and to include mitigation risks and planning as well as adaptation.

**Economics and transition**

Many submitters commented on the opportunities and challenges of a low-emissions, climate resilient Aotearoa (such as active transport, forestry, decarbonisation of the economy). Some wanted to see more transitional analysis (including distributional and regional impacts) before the 2050 target was set. Some were concerned that funding of mitigation and adaptation needed greater consideration.

A key theme from submissions was the need for a “just” transition that is fair and inclusive across society and the economy. Particular matters highlighted by submitters that would support the transition were:

- policy stability to support long-term investments that reduce GHG emissions and improve resilience
- investment in research and development
- partnership between Government and iwi
- coordination between local and central Government, and the private sector.
2 Introductory and transitional provisions

This chapter presents a clause-by-clause summary of submissions and officials’ analysis and recommendations relating to the introductory and transitional provisions of the Bill including:

- Title
- Purpose
- Treaty of Waitangi (Te Tiriti o Waitangi)
- Interpretation
- Transitional, savings and related provisions

2.1 Clause 1: Title

Explanation

Submissions
A small number of submitters (8) questioned the suitability of the title of the Bill and suggested alternatives including:

- Zero Carbon and Climate Change Response Bill – to bring ‘zero carbon’ to the forefront of the Bill’s title.
- Climate Change Response (GHG Limitation) Act – to recognise that the Bill encompasses all GHGs, not just carbon dioxide.
- Climate Change Response (Net Zero Emissions) Amendment Bill – to reflect that the Bill is about net zero GHG emissions, rather than gross emissions.
- Climate and Environment Emergency Bill, or Climate Disaster Prevention Bill, or Climate Crisis Response Bill, or Climate Change Response (Emergency) Amendment Bill – to reflect the criticality of the issue and submitters call for declaration of a climate emergency.

Analysis
The vast majority of submitters did not propose changes to the title of the Bill.

Given the Bill amends the CCRA (the principal Act), it is appropriate that the Bill’s title reflect its status as an Amendment Act. The Bill was first presented to the public under the title ‘Zero Carbon Bill’ and the current title of the Bill is consistent with this approach.

The 2050 target in the Bill incorporates both net and gross emissions components, meaning reference to net zero would not be appropriate.

The question of whether or not to declare a climate emergency, and its legal implications, are beyond the scope of the Bill. This is also discussed in chapter 8.1.

Recommendation
Proceed with clause 1 with no change.
2.2 Clause 2: Commencement

Explanation
Clause 2 states when the Act will come into force: This Act comes into force on the day after the date on which it receives Royal assent.

Submissions
No submissions were received on this clause.

Analysis
There are no submissions to analyse on this clause.

Recommendation
Proceed with clause 2 with no change.

2.3 Clause 3: Principal Act

Explanation
Clause 3 provides for the Bill to amend the Climate Change Response Act 2002.

Submissions
A small number of submitters (16) would prefer the Bill to be standalone because presenting the Bill as an amendment to the Principal act complicates what “should be a model of clarity and accessibility if it is to garner and retain public support”. One submitter noted that the Bill provides for the 2050 target in clause 50 rather than at the front of the Bill, in contrast with the United Kingdom’s Climate Change Act 2008 which sets the target in section 1 of that Act. Submitters also argued that a standalone Bill would raise its standing above other policy tools (eg, the NZ ETS).

Analysis
Treating the Bill as an amendment to the CCRA is intended to provide greater ease of use, as this means there would be a single piece of climate change legislation for New Zealand. It also makes the policy interactions between the CCRA and the Bill clearer (eg, between targets and the NZ ETS). Whether the Bill is standalone or an amendment to the Principal Act does not affect its legal standing.

Recommendation
Proceed with clause 3 with no change.

2.4 Clause 4: Section 3 amended - Purpose

Explanation
Clause 4 amends section 3 of the principal Act to add another purpose to that Act. The additional purpose is to provide a framework by which New Zealand can develop and implement clear and stable climate change policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5 °Celsius above pre-industrial levels.
Submissions
The vast majority of submitters indicated support for the purpose of the Bill, including the establishment of a framework to reduce New Zealand’s GHG emissions, and the need to contribute to the global effort to limit the global average temperature increase to 1.5 °Celsius above pre-industrial levels.

Nearly all individual submitters who commented on this clause supported embedding into the Bill’s purpose statement the objective of limiting the global average temperature rise to no more than 1.5 degrees Celsius above pre-industrial levels. Organisational submitters tended to support in part and made a number of suggestions for change including:

Climate adaptation
A number of submissions, in particular from local Government and community groups, called for climate change adaptation to be incorporated in the purpose of the Bill to ensure it is accorded the same priority as mitigation. They expressed concern that the omission of adaptation from the purpose statement would render the adaptation provisions secondary to other parts of the Bill.

Climate emergency
Several NGOs, universities and community groups argued that the Bill’s purpose should make reference to climate change as an emergency. These submitters also held the Bill did not do enough for climate change.

Some of these submissions asked that the purpose be strengthened to achieve a climate neutral society and economy by 2050, and sought for the Bill to include a set of principles which reflect that we have a responsibility to reduce global warming and account for its impacts.

Food production
Submitters from the agricultural sector commented that the purpose should provide for the protection of food production, reflecting a similar acknowledgement in the Paris Agreement. Article 2 of the Paris Agreement sets out that the Agreement aims to strengthen the global response to the threat of climate change, including by increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low GHG emissions development, in a manner that does not threaten food production.

Distributional impacts of climate change policies
Some submitters argued that the amended purpose does not adequately account for the distributional impacts of climate policies. They asked for the purpose to make specific reference to transitioning to a just and inclusive society, including the equitable distribution of benefits, costs and risks between generations. Several submitters called for the concept of equity to be explicitly referenced in the purpose statement of the Bill. Related to this, some submitters called for the purpose statement to reflect the inter-relatedness between the Bill’s purpose and outcomes such as Māori health and wellbeing.

Analysis
Climate change adaptation
We agree with submitters that climate change adaptation should be incorporated into the purpose of the Bill. 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. Changing the purpose statement 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.
Climate emergency
A number of councils across New Zealand have recently declared climate emergencies, and some submitters called for the Bill’s purpose to include reference to a climate emergency. While the risks of climate change do need to be addressed with some urgency, the intention of the Bill is to put in place a long-term, stable framework for mitigating and adapting to climate change, so as to facilitate a smooth transition to a climate resilient, low emissions economy. Given the absence of a consistent definition of a ‘climate emergency’, we see risks that introducing this terminology into legislation may lead to interpretative difficulties. While symbolic of a commitment to acting with urgency on climate change, ‘climate emergency’ declarations as made worldwide and by local Government in New Zealand have largely political implications rather than specific legal or financial consequences. The Government is free to make a ‘climate emergency’ declaration on its own initiative, and to define what that means for the Government. For these reasons, we do not propose including reference to climate emergency in the Bill’s purpose.

Food production
A principal focus of the Bill is to contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5 °C above pre-industrial levels. The protection of New Zealand’s ability to produce food is important, and is one of a wide range of considerations relevant to New Zealand’s long-term transition. The framework provided by the Bill requires the Commission to have regard to a wide range of factors in performing its various functions, including considering the distributional impacts across regions and communities of New Zealand. The implications for food production would be one of the factors that we would expect the Commission to consider in carrying out its functions.

Distributional impacts of climate change policies
As referenced above, the Bill requires the Commission to have regard to a wide range of factors in performing its functions, including considering the distributional impacts across regions and communities of New Zealand, and from generation to generation, when advising on emissions budgets. Similarly, in preparing a NCCRA, the Commission is required to into account the distribution of the effects of climate change across society, in particular on vulnerable groups or sectors. We consider that these provisions address submitters concerns.

Recommendation
Proceed with clause 4 with an amendment to—

• reflect the Bill’s requirements to plan for adapting to the effects of a changing climate.

2.5 Clause 5: Section 3A amended - Treaty of Waitangi/Te Tiriti o Waitangi

Explanation
Clause 5 amends section 3A of the principal Act to add actions required by the Minister for Climate Change (the Minister) in order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi.
Submissions
We received a number of detailed submissions from iwi/Māori organisations on this part of the Bill (eg, Federation of Māori Authorities — FOMA, New Zealand Māori Council — NZMC, Te Ara Whatu, Te Urunga o Kea – Te Arawa Climate Change Working Group, Te Rūnanga o Ngāi Tahu). Other organisations (eg, local Government, health boards, NGOs and community groups) and individual submitters (Māori and non-Māori) also commented on this clause.

Overview
There was little opposition to the Treaty of Waitangi provision in the Bill. Most submitters on this clause viewed recognition and provision for the Treaty as integral to the Bill and the work of the Commission.

Most submitters on this clause believe the Bill does not uphold the Crown’s obligations to Māori pursuant to the Treaty of Waitangi, and proposed ways that the Bill could give greater effect to the Treaty. In particular, submitters suggested changes to provide for:

- Greater recognition of the Treaty of Waitangi
- Stronger Māori representation on the Commission
- A co-design approach with Māori in the development of emissions budgets, emissions reduction plans, climate change risk assessments, and national adaptation plans
- More emphasis on te ao Māori and mātauranga Māori
- Greater recognition of the distributional impacts on Māori throughout the Bill.

Greater recognition of the Treaty of Waitangi
Many submitters noted the Crown has significant Treaty obligations, including upholding a partnership with Māori, actively protecting Māori rights and interests and acting in good faith. Submitters sought changes to enshrine the role of tangata whenua in the Bill, as well as the Government’s responsibility to consider kaitiakitanga and ensure future generations inherit a safe and sustainable world to live in.

Submitters on this clause (eg, Ngāti Ruanui, Te Ohu Kaimoana, Te Urunga o Kea, Ngāi Tahu and Waikato Tainui) commented that the intent to give effect to the principles of the Treaty is not adequately articulated under clause 3A of the Bill. They sought to strengthen that clause by providing that, in exercising powers and duties under the Bill, the Minister and the Commission be required to give effect to the principles of the Treaty.

Submitters requested greater clarity as to what principles the Bill is referring to with respect to the Treaty of Waitangi. Reference was made by submitters to tino rangatiratanga, kāwanatanga, whanaungatanga, ōritetanga and wairuatanga. Some submitters suggested that these principles be articulated in the explanatory note and embedded in the operational functions of the Commission.

Stronger Māori representation on the Commission
Submitters were supportive of the appointment of one or more members to the Commission with strong iwi ties to help give effect to the Treaty partnership, while also ensuring the independence of the Commission. Ngāti Ruanui, NZMC, Te Arawa Primary Sector (TAPS), the Office of the Māori Climate Commission and Te Ara Whatu, among other submitters, proposed Māori represent half of the Commission’s membership.

Iwi/Māori submitters considered that the nominations for members of the Commission should come from iwi themselves, including by providing within the Bill for Māori representation on the nominating body (eg, Ngāi Tahu, Ngāti Ruanui, TAPS). Ngāti Ruanui states that, “the Government has acknowledged that Māori are among the most vulnerable to climate change. [...] There is therefore a need for Māori
leaders and representation in both the Commission and the appointment panel to uphold tino rangatiratanga.”

A further suggestion was made that the Minister be required to have regard to the need for the Commission to have members who have “cultural skills”, and that this be considered before recommending appointments to the Commission.

**Giving effect to a co-design approach in the Bill**

Iwi/Māori and community groups submitted that, as Māori are the tangata whenua of New Zealand, Māori rights should be at the centre of any decision-making about climate change mitigation and adaptation. One of the primary issues identified by submitters from iwi/Māori groups, NGOs, local Government, community groups and academia, was the lack of explicit provision for Māori involvement in decision-making and future planning processes.

Submitters called for a co-design approach between the Crown and Māori in the development of emissions budgets, emissions reduction plans, climate change risk assessments, and national adaption plans. For example, Te Urunga o Kea states that, “the Minister must co-design and co-develop [the emissions reduction plans and NAP’s] with Māori, rather than consulting them after the fact.” Submitters put forward that a co-design approach would enable better emphasis on te ao Māori and mātauranga Māori, as providing relevant knowledge to inform climate change policy.

**Distributional impacts on Māori**

Iwi/Māori requested the Bill be clearer about the distributional impacts of climate change on Māori (eg, Ngāti Ruanui). TAPS submitted they would like further reporting on the equity implications of the adaptation plan on vulnerable communities. They proposed the design and implementation of a Māori Primary Sector Adaptation Plan.

**Analysis**

The Bill intends to give effect to Treaty of Waitangi considerations in five specific ways:

- by providing that the nominating committee must consult iwi and Māori representative organisations before nominating a person for appointment
- by requiring the Minister to have regard to the need for the Commission to have members who have technical and professional skills, experience, and expertise, and innovative approaches, relevant to the Treaty of Waitangi, before recommending the appointment of a member to the Commission
- expertise in te Tiriti o Waitangi and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity) is listed as expertise the Minister is required to have regard to when recommending appointments for the Commission
- by providing that an emissions reduction plan must include a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions and must ensure that iwi and Māori have been adequately consulted on the plan
- by requiring the Minister, in preparing a NAP, to take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori.

In general, and subject to the recommended change to new section 5L, we consider that these specific measures represent appropriate mechanisms for giving effect to the Treaty.
Giving effect to the Treaty of Waitangi
Section 3A of the CCRA includes the wording, “in order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi...” The Act then lists specific provisions in the Bill that reflect the Treaty principles.

The Legislation Design and Advisory Committee (LDAC) guidelines (section 5.6) were considered in drafting this Clause. Further, how the principles of the Treaty are included in other Acts was also taken into account. The LDAC guidelines provide two classes of measures that may be included in legislation to enable the Treaty’s principles: general measures or specific measures. Specific measures have been the usual approach since 2000.

As noted above, the intent is for the Bill to legislate specific measures that enable Treaty of Waitangi principles to be given effect. Each of these measures are addressed within the relevant clause and sections. A general clause in itself would not be clear on how the Treaty of Waitangi is to be operationalised in practice.

We do not recommend specifying which principles of the Treaty are covered under the Bill. The Treaty of Waitangi is a living document and we do not want the Bill to be restrictive on the principles it covers.

We consider it is important that the principles of the Treaty of Waitangi permeate the way in which the Commission carries out its functions and exercises its powers, and that the Bill can be strengthened in this regard. In relation to new section 5L of the Bill, we recommend that the Commission, in performing its functions and duties and exercising its powers, must have regard to the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori. This elevates the consideration by the Commission of concerns raised by iwi/Māori in submissions.

Establish permanent Māori representation on the Commission
This is discussed further in chapter 3 of this report, and specifically in the analysis of new sections 5E to 5H, which relate to the process of appointing members of the Commission.

Giving effect to a co-design approach in the Bill
Te Arawhiti – the Office for Māori Crown Relations has developed best practice guidelines for engagement with Māori. Their engagement framework includes a spectrum of engagement methods, from informing, consulting, collaborating, partnering and co-designing to empowering. The Ministry for the Environment, with support from Te Arawhiti, will develop guidance for the Commission for engaging with Māori.

The Bill is not intended to be prescriptive on the form of engagement to be implemented with iwi/Māori. Making reference to specific consultation requirements in the Bill would pre-empt any other possible forms of engagement with iwi/Māori, including a co-design or partnership approach as recommended by submitters.

Distributional impacts on iwi/Māori
References to ‘distributional impacts’ occur throughout the Bill, for example, in reviewing the 2050 target, recommending or setting emissions budgets, and for the adaptation risk assessment and planning functions. Each of these sections address ‘distributional impacts’ differently. However, the intent is for each to interpret and give effect to the meaning of distributional impacts widely, including taking into account the impacts on iwi/Māori.
Emphasis on te ao Māori and mātauranga Māori
The Minister is required to have regard to expertise in te Tiriti o Waitangi and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity) when recommending appointments for the Commission.

While there are no other references to te ao Māori or mātauranga Māori within the Bill, it is inferred in other instances (for example, ‘a broad range of domestic and international scientific advice’ when setting emissions budgets).

Recommendation
Proceed with clause 5 with no change.

We note that, in relation to new section 5L, we recommend that the Commission must have regard to the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori, when performing its functions and duties and exercising its powers under the Bill.

2.6 Clause 6: Section 4 amended - Interpretation

Explanation
Clause 6 amends section 4 of the principal Act to define terms used in the new sections inserted by the Bill.

Submissions and analysis
Only a few submitters had views on this section: about 30 organisations, and 100 individuals (nearly all of which derived from form submissions). Most proposed new or suggested changes primarily relating to GHG emissions. Other suggestions for purposes of clarity, including definitions of ‘effects’ or ‘Paris Agreement commitments’, we consider to have been resolved through other recommended changes to the Bill.

Submissions in relation to specific definitions are discussed further in chapter 4 of this report, and we recommend changes to the definitions of the terms “New Zealand GHG Inventory”, “net emissions” and “net budget emissions” as described in that chapter. The reasons for the recommended changes are summarised in Table 2 below.

Table 2. Recommended changes to Clause 6: Interpretation

<table>
<thead>
<tr>
<th>Term</th>
<th>Current definition in the Bill</th>
<th>Recommended change</th>
<th>Reason for recommended change</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Zealand GHG Inventory</td>
<td>The official annual estimate of all GHG emissions that have been generated in New Zealand since 1990 by human activities.</td>
<td>Include a specific cross-reference to existing provisions of the principal Act including section 32(b)(i) which requires the inventory agency (part of MFE) to produce the New Zealand GHG Inventory.</td>
<td>The term “New Zealand GHG Inventory” is relied upon for definitions of inventory sectors and to trigger timeframes for review reports. The recommended change more properly incorporates the official report, which is a statutory instrument produced under section 32 of the Act (in accordance with international obligations and...</td>
</tr>
<tr>
<td>Term</td>
<td>Current definition in the Bill</td>
<td>Recommended change</td>
<td>Reason for recommended change</td>
</tr>
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</tr>
<tr>
<td>Net emissions</td>
<td>Gross emissions combined with emissions and removals from land use, land use change, and the forestry sector. An additional term at new section 5S “net budget emissions” means gross emissions, offset by removals and offshore mitigation.</td>
<td>Remove both terms “net emissions” and “net budget emissions” and replace them with a single term “net accounting emissions” that includes gross emissions, emissions and removals from the LULUCF sector, and offshore mitigation.</td>
<td>As described in chapter 4, it is recommended that emissions, removals and offshore mitigation may be counted toward both emissions budgets and the 2050 target (subject to constraints set out in the legislation).</td>
</tr>
</tbody>
</table>

**Recommendation**
Proceed with clause 6 with amendments to—

- amend the definition of the New Zealand GHG Inventory to reference existing statutory provisions for the preparation of that report
- add a term “net accounting emissions” to replace the existing terms “net emissions” (at clause 6) and “net budget emissions” (at clause 8, new section 5S).

**2.7 Transitional, savings, and related provisions**

**Explanation**
Clause 7 inserts new section 4A into the principal Act. New section 4A gives effect to the transitional, savings, and related provisions contained in new Schedule 1AA (which is in Schedule 1 of the Bill).

Clause 9 inserts new Schedule 1AA into the principal Act.

The clauses provide an alternative process for the first appointment of members of the Commission, a process for the Minister (rather than the Commission) to carry out the first climate change risk assessment, and savings of existing targets for GHGs made under section 224.

**Submissions**
There was little comment on these clauses. Four organisational submitters commented on the appointment of the first members of the Commission. One organisational submitter commented on the preparatory work for the first NCCRA.

**Appointment of the first members of the Commission**
Two submitters questioned the independence of the first Commission appointed under proposed new Schedule 1AA. The others sought clarification on the process for appointing the first members of the Commission.

One submitter recommended the fast tracking of the establishment process for the first members of the Commission and that new Schedule 1AA be deleted. Another submitter recommended consultation requirements be included in new Schedule 1AA.
Preparatory work for the first NCCRA
One submitter expressed concern that provisions 5ZN(2) and 5ZN(3), which relate to matters to be taken into account in preparation of NCCRA, would not be applied for the first NCCRA.

Savings for existing GHG targets made under section 224
As noted in relation to clause 11 of the Bill, there was some confusion about whether the Bill provides for the existing GHG reduction target, which was set pursuant to section 224 in 2011, to continue in force.

Analysis
Appointment of the first members of the Commission
We understand submitters are concerned that the first Commission may not be fully independent, because the initial appointments are recommended by the Minister without reference to the nominating committee. The Commission itself is proposed to be an independent Crown entity and final appointments are not made directly by the Minister, but by the Governor-General on the recommendation of the Minister.

We consider the Commission’s independence would not be negated by the way the initial appointments are made. This is because the Crown Entities Act 2004 provides a robust framework that prevents Ministerial interference with the Commission and how it exercises its functions, powers and duties. The process for appointing the first members of the Commission is set out in Schedule 1AA clause 1, and allows the Minister to undertake preparations for recommending members before the Bill is enacted. The process includes a political consultation requirement, and a requirement for the Minister to have regard to the matters in clause 5H that relate to the members’ necessary skills and experience. The Minister must comply with this process for the appointments to be valid and lawful.

Preparatory work for the first NCCRA
The Bill already provides (in new section 5ZP(2)) that the considerations laid out in new section 5ZN must be taken into account by the Minister when preparing the first risk assessment (as well as by the Commission when preparing subsequent risk assessments).

Savings for existing targets
Clause 14 of the Bill revokes the target set in 2011 for a 50% reduction in New Zealand GHG emissions from 1990 levels by 2050. Clause 11 amends section 224 to make clear that other targets for GHG emissions may no longer be set under that section. See chapter 6 (Consequential Amendments) for further analysis.

Other targets set pursuant to section 224 are unaltered by the Bill. One of those is a target that, by 2040, our per capita transport GHG emissions will be reduced to 50 per cent of 2007 levels.

Clause 3 of new Schedule 1AA clarifies that any existing target for GHG emissions continues in force and may still be amended or revoked, even though section 224 no longer applies to targets for GHG emissions.

We recommend a minor change to this clause, to make it clear that it is subject to clause 14 of the Bill (which revokes the target gazetted in 2011), and that any other target set pursuant to section 224 continues in force and may still be amended or revoked.

Recommendation
Proceed with clause 7 with no change.
Proceed with clause 9 with a minor amendment to—
• make it clear that clause 3 of new Schedule 1AA is subject to clause 14 of the Bill (which revokes the target gazetted in 2011), and that any other target set pursuant to section 224 continues in force and may still be amended or revoked.
Climate Change Commission

This chapter presents a clause-by-clause summary of submissions received on the Climate Change Commission (Commission), and officials’ analysis and recommendations relating to clauses in Part 1A of the Bill. These clauses relate to:

- the establishment of the Commission and appointment processes
- the Commission’s functions, duties and powers.

3.1 New Sections 5A to 5I: Establishment and appointments

A key focus of the Bill is establishing an independent Commission to provide expert advice to the Government on mitigating the causes of climate change and adapting to the effects of climate change. The Commission will also monitor and review the Government’s progress towards its emissions reduction and adaptation goals.

An independent and credible Commission will give New Zealanders confidence that climate change policies will remain stable and that the long-term target will be enduring. The Commission will play an important role in providing transparency for decisions about climate change policy and helping New Zealanders hold Government to account for progress.

Other countries have established similar independent institutions to provide advice to governments on climate change. The immediate former and current Parliamentary Commissioners for the Environment and the Productivity Commission have recommended an institution like this should be established in New Zealand.

Submitters generally supported the establishment of an independent Commission to provide advice and monitor progress. Common suggestions related to enhancing the independence of the Commission, for example, by providing for the Commission to report to Parliament rather than the Executive and to safeguard its funding.

A large number of submitters commented that it will be important for the Commission to consider matters of interest to iwi and Māori in its work, with some suggesting strengthened provisions to ensure the Commission has appropriate expertise or representation in this regard.

New section 5A Climate Change Commission established

Explanation

New section 5A establishes the Commission.

Submissions

Submitters generally supported the establishment of an independent Commission to provide advice on climate change mitigation and adaptation, and to monitor progress towards emissions budgets and the 2050 target.

Some submitters proposed that a Māori name for the Commission be included in the Bill.

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4 These include Australia, Denmark, Finland, Ireland, Sweden and the United Kingdom.
Several submitters also suggested alternative names for the Commission (eg, Climate Crisis Commission, Climate Crisis (Response) Commission, 21st Century Transition Commission, Next Economy / New Economy Commission).

**Analysis**

There is strong support for the establishment of an independent Commission, and its establishment is central to the institutional framework set up by the Bill. The vast majority of submitters did not suggest changing the name of the Commission.

It would be appropriate for the Commission to have a Māori name and there is recent precedent for including this in a Bill (eg, Kāinga Ora–Homes and Communities Bill). However, the development of a suitable name for inclusion in legislation should follow a robust process, and for this reason we do not propose including a Māori name in the Bill. Instead, we recommend that this be addressed as part of Commission’s establishment process.

Other names proposed (eg, 21st Century Commission, Next Economy Commission, New Economy Commission) do not relate directly to the proposed purpose and functions of the Commission.

**Recommendation**

Proceed with the insertion of new section 5A with no change.

**New section 5B Purposes of Commission**

**Explanation**

New section 5B states the purposes of the Commission, which are—

(a) to provide independent, expert advice to the Government on mitigating the effects of climate change (including through reducing emissions of GHGs) and adapting to the effects of climate change; and

(b) to monitor and review the Government’s progress towards its emissions reduction and adaptation goals.

**Submissions**

Submitters generally supported the establishment of an independent Commission to provide advice on climate change mitigation and adaptation, and to monitor progress towards emissions budgets and the 2050 target.

Some submitters sought changes to the Commission’s purpose, often to reflect other changes they sought in the Bill. A common suggestion was to bring the purpose of the Commission into alignment with the Paris Agreement goals so that, along with mitigation and adaptation, it recognises the priority of safeguarding food security or not threatening food production.

Others supported the pillars of the all-of-Government framework for climate policy and decision-making\(^5\), and sought to see these reflected in the Commission’s purpose. In particular, some sought a specific reference to a “just and inclusive society”.

Other requests included that the Commission’s purpose statement:

- recognise the capture and storage of GHGs as a means of mitigating climate change (along with reducing emissions)

\(^5\) Leadership at home and internationally; a productive, sustainable and climate-resilient economy; and a just and inclusive society.
• include reference to facilitating public participation
• give the Commission a climate science research purpose (eg, to investigate climate change)
• focus primarily on supporting technological innovation
• not include the word “expert” in new section 5B(a).

Submitters also suggested that the Commission should have objectives set out in the legislation, that it should have a detailed Charter, or that certain principles should be central to the Commission’s operation (including te Tiriti o Waitangi or social justice).

Analysis
The purposes of the Commission, set out in new section 5B, represent fundamental parts of the institutional architecture provided for in the Bill. Specifically, they describe the Commission’s purpose to advise on mitigating and adapting to the effects of climate change. They also give the Commission the important role of monitoring and reviewing the Government’s progress towards its emissions reduction and adaptation goals.

While the Commission is expected to make use of the available science relevant to climate change, we do not consider the Commission needs to be established with a scientific research purpose. The Commission is intended primarily as an advisory and monitoring body. Scientific research institutions and academics in New Zealand and overseas undertake a broad range of climate science research, and it will be appropriate for the Commission to draw upon this body of evidence in the performance of its functions under the Bill.

Several other suggestions made by submitters might be better reflected as matters for the Commission to consider in carrying out its functions. These have been considered in relation to that section of the Bill (new section 5L).

While not a matter raised by submitters, it would be helpful to clarify that the Commission’s role is to provide expert advice on mitigating climate change rather than mitigating “the effects of” climate change. Mitigating the effects of climate change is a similar concept to adaptation, whereas mitigating climate change is clearer.

Recommendation
Proceed with the insertion of new section 5B with minor amendment to—

• clarify that advice to Government should be on “mitigating climate change” rather than “mitigating the effects of climate change”.

New section 5C Commission is Crown entity
Explanation
New section 5C states that the Commission is a Crown entity for the purposes of the Crown Entities Act 2004, and applies that Act to the Commission.

Submissions
Some submitters suggested other types of entities for the Commission’s institutional form, although sometimes with conflicting rationale. Examples include that the Commission should be an Office of Parliament (or the functions should be given to the existing Parliamentary Commissioner for the Environment, PCE), that it should be like the Law Commission, that it should be like the UK’s Committee on Climate Change, or that it should have a similar degree of independence as the Reserve Bank or the judiciary. Some suggested that the Commission’s status as an independent Crown entity should be made clearer in the Bill.
Analysis

We note that related clause 13 of the Bill amends the Crown Entities Act 2004 to add the Commission to Schedule 1, Part 3 of that Act, listing it as an “independent Crown entity”.

An independent Crown entity is the most appropriate institutional form for an entity with the functions proposed for the Commission. It will belong to the executive branch of Government (appropriate for an entity which advises on decisions to be taken by the executive) but operates with the highest degree of independence (the legislation will require the Commission to act independently in performing its functions). The Government will not be able to issue directions to the Commission in relation to any of its functions, powers, or duties, with the sole exception set out in new section 5N(2), which requires the Commission to take Government policy into account in limited circumstances (though it does not have to give effect to that policy). Further analysis is set out in this report in relation to new section 5N.

The Crown Entities Act provides for members of independent Crown entities to be appointed for terms of up to five years (longer than for other types of Crown entities), and provides only limited reasons for which a member of an independent Crown entity may be removed from office, subject to a number of checks and balances. These factors will also contribute to the Commission’s independence from the Government of the day.

In addition to advising the Government, the Commission will independently monitor progress, and the reports that it provides will help New Zealanders — and Parliament — to hold the Government to account. Tabling and publication requirements will ensure that the Commission’s reports are readily available for this purpose.

Other independent Crown entities with functions to give independent recommendations or advice to the Government include, for example, the New Zealand Productivity Commission and the New Zealand Law Commission.

Recommendation

Proceed with the insertion of new section 5C with no change.

New section 5D Membership of Commission

Explanation

New section 5D states that the Commission must have seven members: a Chairperson, a Deputy Chairperson, and five other members.

Submissions

Submitters sought a strengthening of the provisions to provide for Māori understanding on the Commission and reflect a partnership approach, including by requiring representation on the Commission (at 50 per cent or a minimum number of members).

A range of submitters sought youth representation on the Commission. A common reason for this view was that young people will bear the future effects of climate change or climate change policy, and consequently have a particular interest that should be recognised.

6 Whereas the responsible Minister may, for instance, remove a member of a Crown agent from office entirely at his or her discretion, the Crown Entities Act only provides for the removal of members of an independent Crown entity by the Governor-General, on the advice of the Minister following consultation with the Attorney-General, for just cause. “Just cause” includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach). [Crown Entities Act 2004 sections 39 and 40 refer.]
Other submissions sought representation from unions, Pacific communities, and minority groups, and consideration of gender equality. Some submitted that there should be a minimum number of commissioners with particular types of expertise.\textsuperscript{7}

Some submitted that seven members might not be enough to provide for the diverse needs of the Commission, and suggested a larger board, provision for the Commission to co-opt additional members, or an expert advisory framework.

**Analysis**

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.

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 we recommend a change to new section 5L to strengthen the Commission’s consideration of the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi and Māori.

Existing provisions of the Bill and the Crown Entities Act allow for the Commission to appoint subcommittees and secure advice, and we would encourage the Commission to consider how it can best draw on a diversity of views, for example by establishing iwi/Māori, youth and/or scientific advisory bodies.

**Recommendation**

Proceed with the insertion of new section 5D with no change.

**New section 5E Process for appointment of members of the Commission**

**Explanation**

New section 5E sets out the process by which a person is appointed as a member of the Commission. First, the nominating committee must nominate the person for appointment. Then, the Minister must decide whether to recommend to the Governor-General that the person be appointed, after having regard to the matters set out in new section 5H and consulting with representatives of the other political parties in Parliament. The members, Chairperson and Deputy Chairperson are appointed by the Governor-General on the recommendation of the Minister.

**Submissions**

Some submitters sought more multi-partisan or Parliamentary involvement in the appointment of Commissioners. Specific submissions suggested that:

- appointments should be approved by a “significant majority” of the House
- the cross-party consultation requirement should require approval from the Leader of the Opposition, or from parties whose members comprise at least 75 per cent of members of Parliament
- the Leader of the Opposition should be on the nominating committee, rather than requiring consultation at a later stage

\textsuperscript{7} For example, climate science, climate adaptation, New Zealand industry, local Government, agriculture, health (or health and climate change), strategic business, engineering, infrastructure, and te Tiriti and te ao Māori.
memberships could be recommended by an independent body such as the State Services Commission, and confirmed directly by a select committee or a vote in the House.

Analysis

While appointments are to be based on expertise and not representation, it is nevertheless desirable for the credibility of the Commission that appointees have broad support, including from across Parliament.

We consider that a requirement to consult with representatives of other parties in Parliament is an appropriate level of involvement and that the Leader of the Opposition’s views will be appropriately considered at that stage. It would be unprecedented in New Zealand for the Leader of the Opposition to have veto power over appointments to a Crown entity. We note that the process in the Bill is similar to the process used for the appointment of members of the Guardians of New Zealand Superannuation.

We do not recommend requiring a super-majority of 75% of the House to approve the appointment of Commissioners. At present, supermajorities are only found in the Electoral Act 1993, for provisions of particularly high constitutional significance. Some provisions cannot be repealed or amended without a majority of 75% of the House of Representatives. Examples are the term of Parliament and the voting age. Others require a supermajority for passing certain resolutions of the House, for example not to hold a by-election when an electorate seat becomes vacant. These supermajority requirements ensure that governments cannot amend electoral law to their advantage and potentially change New Zealand’s constitutional arrangements permanently.

While the appointment of Commissioners will be significant, we do not consider it reaches the levels of fundamental constitutional and democratic significance that justify requiring a supermajority, particularly as the Commission has only advisory and monitoring functions, and its members are not appointed permanently. Even the appointment of judges (who are permanently appointed and do have a significant constitutional function) does not require a 75% majority resolution of the House.

On the contrary, we consider that a supermajority requirement is likely to provide a significant barrier to making the appointments (just as supermajorities are intended to provide a barrier to amending the provisions of the Electoral Act in normal circumstances).

By way of comparison, appointments to the UK’s Committee on Climate Change and its Adaptation Sub-Committee are made by the “national authorities”. These are jointly the Secretary of State (the responsible Minister in the UK), the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department. The national authorities are also required to:

- consult the Chairperson of the Committee before making appointments to the Committee or Adaptation Sub-Committee, and
- consult with the Chair of the Adaptation Sub-Committee before appointing members of the Adaptation Sub-Committee.

We consider that new section 5E, together with the requirements in new sections 5F, 5G and 5H, will ensure a robust appointment process to secure well-qualified and well-supported candidates.

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8 (or 50% of the electorate in a referendum)
9 Climate Change Act 2008, Sch 1, cl 1(1)(a), 16(2); s 95.
10 Climate Change Act 2008, Sch 1, cl 1(2), 2, 16(3)).
Recommendation
Proceed with the insertion of new section 5E with no change.

New section 5F Establishment and membership of nominating committee

Explanation
New section 5F requires the Minister to establish the nominating committee and provides for membership of the nominating committee.

Submissions
Some submitters expressed concern about the nominating committee’s independence from the Minister. There were suggestions that:

- there should be political consultation before appointing the nominating committee
- the nominating committee should be appointed by all parties represented in Parliament
- the nominating committee should make recommendations to the Governor-General directly
- there should be representation on the nominating committee (eg, from iwi or local Government)
- appointments to the nominating committee should require the same expertise considerations and cross-party consultation as appointments to the Commission itself
- the nominating committee should be removed altogether.

Analysis
The provisions in the Bill requiring a nominating committee are similar to those that apply in the appointment of members of the Guardians of New Zealand Superannuation. The nominating committee will comprise people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates, together with the Chair of the Commission (if there is a Chair at the time).

We consider that this section, together with the requirements in new section 5G will ensure a robust and apolitical consideration of a broad pool of candidates, on the basis of merit, and recommend keeping the cross-party consultation requirement separate.

Recommendation
Proceed with the insertion of new section 5F with no change.

New section 5G Role of the nominating committee

Explanation
New section 5G sets out the steps that the nominating committee must take before nominating a person for appointment to the Commission.

Submissions
A number of submissions related to the processes that apply to the nominating committee. Submitters requested that the Bill:

- confirm the tenure and requirements of the committee
- make publically available the process used to appoint members to the nominating committee
- include requirements to consult with local Government or other statutory bodies11
- ensure that the nominating committee is not unreasonably bound to consult with a large number of people and groups

11 For example: New Zealand Fish & Game Council, New Zealand Conservation Authority, PCE.
• make it explicit that the nominating committee must have regard to the expertise considerations in new section 5H.

Analysis
The Bill requires the nominating committee to publicly call for expressions of interest, and to consult any person or group who may have an interest in being a member of the Commission, including iwi and Māori representative organisations, and any person or group that the Minister has identified as having an interest.

The committee must recommend to the Minister candidates who are “suitably qualified to be members of the Commission”. The nominating committee’s assessment of suitability will necessarily reflect the requirements in new section 5H for expertise considerations and new section 5E(1)(c) for cross-party consultation.

It is likely that members of the nominating committee will be appointed for a number of years, and the committee will meet as needed when commissioner roles come up for appointment.

Recommendation
Proceed with the insertion of new section 5G with no change.

New section 5H Matters Minister must have regard to before recommending appointment of member of Commission

Explanation
New section 5H sets out the matters to which the Minister must have regard before recommending the appointment of a member of the Commission.

Submissions
Submissions about the expertise of commissioners to a large extent reflected what was submitted about the functions the Commission should have and the matters it should consider. Submitters also called for various specific sector expertise, and expertise or experience that would promote diversity in the membership of the Commission and inclusive approaches to its work. Submitters sought for the Commission to have a broad range of people and expertise and to have a diverse cultural understanding.

It was suggested that including a climate change science sceptic could bring balance to the Commission’s understanding.

Many sought a stronger requirement for collective understanding of te Tiriti o Waitangi and te ao Māori.12

Broad knowledge and expertise
Submitters supported, or sought stronger consideration of knowledge and expertise in:

• climate science, including having overseas experience in climate science, social and behavioural science and psychology, and expertise across both mitigation and adaptation
• economic policy, regulatory economics, economic analysis and forecasting
• law, politics and policy-making, including experience as an elected member or officer of a local council (not just experience working with Government), knowledge of urban planning and resource management, and expertise in ethics

12 There was also a view submitted opposing the provisions that require particular consideration in relation to iwi and Māori.
• international context, including experience of international negotiation of agreements relating to climate change and understanding of the global impacts of climate change policy interventions
• governance
• social factors, including health, health equity, mental health and hauora Māori, social justice and human rights, impacts on vulnerable groups, supporting employment, Treaty settlements (including the Māori fisheries settlement), and decolonisation
• environment, including environmental science and ecology and knowledge about how to reduce negative environmental impacts
• more specific matters including emissions trading; financial investment; innovation, technology, and technology development and diffusion; renewable energy; Antarctic science; life-cycle assessment approaches; system theory or system change; solar equipment installation; insurance; and the United Nations sustainable development goals.

Specific sector experience
Submitters sought to see commissioners with experience or expertise in specific sectors, including:

• primary industry
• energy, including electricity
• business, trade and productivity, including understanding of competitiveness impacts and specific experience in emissions-intensive, trade-exposed (EITE) sectors
• building, construction and property.

Inclusive approaches
Submitters sought to see commissioners with grassroots experience, and an ability to understand and connect with others, for instance, commissioners with:

• knowledge of the New Zealand community as a whole
• experience with unions, the youth sector, not-for-profit and community organisations
• strong ties and relationships with iwi groups, knowledge of the Māori economy and contemporary Māori approaches, and appreciation of mātauranga Māori
• public and vocational education, science communication, or artistic experience.

Analysis
Broadly, we consider that the expertise matters in the Bill are prescribed with an appropriate level of specificity, and, given the long-term nature of the framework, that it would not be desirable to constrain the appointment criteria further.

We note that other minimum requirements apply: under section 29 of the Crown Entities Act,

(1) A responsible Minister of a statutory entity must appoint, or recommend the appointment of, members...in accordance with any criteria for members and any process for appointment under [the Crown Entities Act] or another Act.

13 Including: knowledge and expertise in the agricultural sector; a wide range of farm and orchard systems; food producers, rural communities and provincial New Zealand; viticulture, horticulture and forestry; organic and regenerative agro-ecological systems approaches; carbon farming expertise; permanent regenerating forestry; experience in re-purposing land to horticulture and other plant-based uses; building soil carbon; analysis of animal versus plant-based agriculture; and the ability for farmers to mitigate and offset their emissions and adapt to a changing climate.
(2) A responsible Minister—

a. may only appoint or recommend a person who, in the responsible Minister’s opinion, has the appropriate knowledge, skills, and experience to assist the statutory entity to achieve its objectives and perform its functions; and

b. subject to subsection (1), in appointing or recommending an appointment, must take into account the desirability of promoting diversity in the membership of Crown entities.

In addition, section 30 of the Crown Entities Act sets out general qualifications for who may be a member of a statutory entity.

The criteria in the Bill allow for broad knowledge and expertise, as well as sector and Government experience, among the seven members of the Commission. The Commission will be supported by a secretariat with a range of specific expertise, and will be able to obtain advice in other ways as needed.

**Recommendation**
Proceed with the insertion of new section 5H with no change.

**New section 5I Members’ term of office**

**Explanation**
New section 5I requires the Minister to recommend terms of appointment of members of the Commission that ensure that no more than two members have their terms of office expiring in any year.

**Submissions**
There was little detailed comment on this clause. Submitters commented on related procedural matters, such as maximum terms for members, means of removal of members, regular audits of the Commission or monitoring of its effectiveness, the drafting of obligations of confidentiality, the Commission’s internal decision-making procedures, and managing or avoiding conflicts of interest. Submitters suggested ways for the Commission to secure technical advice, commented on the ambition of the Commission’s workload (particularly between establishment and the delivery of its first advice on emissions budgets in February 2021), and expressed urgency in having the Commission established and having its recommendations implemented.

It was suggested that the Commission should set an example of low-emissions operation, and report regularly on emissions from its own operations.

**Analysis**
The purpose of new section 5I is to provide for a rolling membership of the Commission, to maintain continuity in its operation and institutional knowledge.

Some of the matters raised by submitters are covered by existing provisions of the Crown Entities Act. For example, procedures for the board of a Crown entity are set out in Schedule 5 of that Act, and the Act also sets maximum terms for members (up to five years for the members of an independent Crown entity). In general, the Commission will establish its own procedures.

**Recommendation**
Proceed with the insertion of new section 5I with no change.
3.2 **New Sections 5J to 5N: Commission’s functions, duties and powers**

The core intended role of the Commission is to be the institution that provides independent expert advice and helps to hold Government to account for progress towards emissions reduction and climate resilience.

**New section 5J Commission’s functions**

**Explanation**

New section 5J summarises the Commission’s functions, which are to—

- regularly review the 2050 target
- advise on emissions budgets, including on revision and on the use of banking and borrowing
- advise on emission-reduction plans
- monitor and report on progress towards mitigation goals
- regularly prepare NCCRAs (except the first one)
- monitor and report on progress towards adaptation goals
- advise on other climate change matters on request.

**Submissions**

Submissions were received in relation to the Commission’s adaptation functions and its functions in relation to the target and emissions budgets. Submitters suggested additional functions for the Commission in advocacy or public education, conducting research and preparing advice on its own initiative, and functions in relation to other legislation and policy. Submitters also commented generally on the scope of the Commission’s functions.

**Adaptation**

Some submitted for changes in relation to the adaptation functions, including:

- that the Commission is not the appropriate body to carry out the risk assessment, and the risk assessment should rather be carried out by central Government, or by a dedicated risk agency. Common reasons given for this view were that the Commission will not have sufficient resource, capability or channels to carry out the assessment; or that the nature of the assessment creates a liability risk for the Commission which would be better borne by central Government.
- that the Commission is the appropriate body to carry out the risk assessment, and should also carry out the first one. In the view of these submitters, urgency does not outweigh the need for independence in the risk assessment.
- that the Commission should also have a role to advise on the NAP, or should create climate adaptation frameworks.

**Target and emissions budgets**

For the Commission’s statutory functions in relation to the target and emissions budgets, submitters sought changes to:

- allow the Commission to set targets or emissions budgets itself
- require the Commission to recommend the target or part of the target before it is legislated
- allow the Commission to revise targets with a greater degree of flexibility, or to set targets within “bookend” constraints in the legislation
• require the Commission to establish a carbon budget or an emissions pathway for the period 2021-2050
• require the Commission to consider emissions reductions beyond 2050
• ensure the Commission cannot recommend delaying or removing the target.

Advocacy or public education
Some submitters sought an additional function for the Commission in advocacy or public education; to provide guidance, advice or assistance to local authorities, communities, businesses and/or individuals\textsuperscript{14}; or to maintain a repository of trusted information about climate change. Others suggested that surveys of public perceptions and attitudes guide policy and community initiatives.

Research and advice on own initiative
Some submitted that, in addition to its statutory functions, the Commission should be able to carry out research and prepare reports or advice on its own initiative, and to support the development of economic modelling capability in New Zealand.

Roles in relation to other legislation and policy
Some sought for the Commission to recommend changes to other legislation in order to align it with the Bill, or to advise on the compatibility of new legislation or regulation with the Bill and its goals. Submitters also sought functions for the Commission under other legislation, including in relation to the NZ ETS and the national waste levy, and as a public authority under the RMA or in preparing RMA planning instruments.

It was also suggested that the Commission could advise on funding of climate policy. Submitters suggested that the Commission have a role in the One Billion Trees programme, that it review infrastructure or development proposals that could result in increased emissions, or that it have a role in oceans policies because of the links between climate change and ocean acidification.

Scope of functions – general
Across the range of submissions, submitters generally sought a broad scope for the Commission’s reports, including requests for mātauranga Māori and Māori-focused research, for the Commission to monitor against a wide range of outcomes (both physical and social)\textsuperscript{15} and for the Commission to make recommendations about how the issues identified may best be addressed. A minority of submitters sought to narrow the scope (eg, of monitoring reports) to allow the Commission to focus on core functions.

Analysis
Adaptation
We remain of the view that the Commission is the appropriate body to carry out the climate change risk assessment on an ongoing basis. Given the expertise and independence of the Commission, the Commission is the most appropriate body to carry out the risk assessment, with the Government

\textsuperscript{14} In addition, one submitter sought for the Treaty of Waitangi Climate Council to have equivalent access as the Minister has to the Commission, its researchers and analysis.

\textsuperscript{15} For example: how the Act’s purpose and principles are being met; how and where other activity is needed to enable the transition; policy synergies, disconnects and inadvertent consequences; equity, poverty, employment, public health and wellbeing outcomes; risks to competitiveness of businesses (especially for EITE firms); cumulative emissions, consumption emissions, embodied carbon in imported products, and emissions from IAS; long-term low-emissions transformation indicators; GHG efficiency measures; cost-effectiveness of policy measures; performance of the emissions trading scheme; indicators of structural change; and steps taken to fulfil te Tiriti principles including partnership.
providing the response. The transitional provision to allow the Minister to carry out the first risk assessment remains an appropriate way to avoid delay, with a robust process involving an independently developed framework and use of an independent panel.

**Target and emissions budgets**

It is important that the responsibility for policy decisions remains with elected decision-makers who are accountable through the democratic process, and we consider it not appropriate to devolve these decisions to an independent body. Further discussion of decision-making powers is included in chapter 7.1 of this report.

We consider it important that the Bill provides enough flexibility to allow the Commission to determine the best approach to its advice about how the 2050 target should be met, including how it considers feasible pathways to the target and the implications for emissions beyond 2050.

**Advocacy or public education**

The publication of the Commission’s reports will be useful for forming a publicly available base of trusted information. Existing provisions in the Bill allow the Commission to publish discussion papers and drafts, and will contribute to the transparency and comprehensiveness of this resource. On balance, we consider an additional advocacy role for the Commission to be not appropriate, as it is important that the Commission remains impartial and objective.

**Research and advice on own initiative**

The existing set of functions in the Bill is sufficiently flexible to allow the Commission independently to carry out research and give advice on a wide range of relevant matters.

**Roles in relation to other legislation and policy**

Cabinet has agreed for the Commission to have specific functions in relation to the NZ ETS: to advise on annual decisions about unit supply, and to advise on phase-down rates for industrial allocation. Those functions are not in the Bill, but will be progressed with other legislative amendments to improve the NZ ETS. It may be appropriate for other roles for the Commission to be considered in the context of the Government’s announced review of the resource management system. However, it is not our preference to add any functions under other legislation into this Bill.

Note that chapter 4.5 of this report discusses how the 2050 target and emissions budgets may be considered in broader Government decision-making.

**Scope of functions – general**

While the Bill sets out requirements for the Commission’s advice and monitoring functions, we expect the Commission to exercise expert judgement about the way in which it considers progress and the recommendations that it makes. We consider that the Bill is sufficiently flexible to allow for this.

**Recommendation**

Proceed with the insertion of new section 5J with no change.

**New section 5K Reports to Government**

**Explanation**

New section 5K allows the Minister to request that the Commission prepare reports to the Government on matters related to reducing emissions of GHGs and adapting to the effects of climate change.
Submissions
A minority of submitters expressed concern about the function for the Commission to provide advice requested by the Government. These submitters were concerned that the provision could compromise the Commission’s independence.

In relation to the Commission’s reporting more generally, submitters sought more timely publication of the Commission’s reports and for the Commission’s reports to be given to Parliament directly or more quickly.

Analysis
The ability for the Minister to request advice from the Commission will help to ensure that independent, expert advice is available to inform a range of climate policy decisions in the future. The Commission will be required to act independently of Government policy in preparing that advice.

The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendation
Proceed with the insertion of new section 5K with amendments to —

- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

New section 5L Matters Commission must consider

Explanation
New section 5L sets out the matters that the Commission must consider in performing its functions and duties and exercising its powers.

Note that other sections in the Bill set out matters to be considered in relation to emissions budgets and emissions reduction plans (new sections 5W, 5X and 5Z). Submissions on these matters have been considered together.

Submissions
There was little objection to the matters in the Bill. However, a few submitters called for the lists of matters to be harmonised or simplified, to better provide for the Commission to exercise analytical judgement. Many submitters submitted further matters that the Commission should take account of. In general, those who submitted additional matters sought to bolster the Commission’s consideration of one or more of the following:

- the best available information
- New Zealand’s fair share of a global effort
- a fair distribution of costs, benefits and risks within New Zealand
- specific ways of achieving climate outcomes
- the importance of non-climate outcomes.

Best available information
Submitters supported, or sought stronger consideration of:
• the best available scientific knowledge, with emphasis on science that is up-to-date, globally accepted (including reports of the IPCC), and relevant to New Zealand
• types of information, such as climate modelling and specific information about cumulative emissions and tipping points
• information from those with particular knowledge, including mātauranga Māori and sector-specific information
• uncertainties and risks (associated with both action and inaction) including the potential for emissions leakage and room for enhancements in scientific and other knowledge
• ways in which uncertainties should be taken into account, including by applying the precautionary principle, identifying research required, identifying remedies for emissions leakage risks, and promoting optionality and flexibility of mitigation options.

New Zealand’s fair share of a global effort
There was emphasis on an international outlook and identifying New Zealand’s fair contribution, particularly in relation to a review of the target. Submitters supported, or sought stronger consideration of:

• alignment with international agreements, including the Paris Agreement, and long-term trends, including the likelihood of the international community not meeting the temperature goals of the Paris Agreement
• New Zealand’s commitment to leadership and ambition, and New Zealand’s historical emissions
• when considering responses taken or planned by Parties to the Paris Agreement and the UNFCCC, the context and rationale for those responses and their applicability in the New Zealand context
• the likely global effects of New Zealand’s actions, including flow-on effects and the distribution of benefits, costs and risks between countries
• emissions from IAS, and trends in the opportunities for offshore mitigation and international purchases
• effects on the competitiveness of New Zealand businesses and, in relation to new technologies and practices, both the advantages and disadvantages of early adoption
• support that New Zealand might provide to people displaced by climate change, including from the Pacific.

A fair distribution of costs, benefits and risks within New Zealand
Submitters supported, or sought stronger consideration of justice, fairness and equity, including:

• by considering differences between sectors, regions, communities and socio-economic groups
• by considering the distribution of benefits, costs and risks across (as well as between) generations, and how policies can ensure that the burden of adjustment is shared fairly (eg, between central government, local government, business and individuals; or between sectors and sub-sectors of the economy)
• by applying established principles of justice16.

Specific ways of achieving climate outcomes
Submitters supported, or sought stronger consideration of:

16 Commonly those listed in Appendix 1 to Hall, D (ed) (2019) A Careful Revolution, BWB Texts, which are 1) Collective responsibility to act; 2) Te Tiriti o Waitangi; 3) Duty of Care; 4) Sharing the burden; 5) Polluter pays; 6) Protecting the least advantaged; 7) Principle of pre-emption; 9) Tailored and targeted transitional assistance; 10) Collaboration, partnership and recognition; 11) Policy certainty; 12) Anticipatory focus. Just transition principles of the International Trade Union Congress were also referenced.
• a need to achieve real carbon dioxide reductions, or to limit forestry removals
• measures that might achieve emissions-reduction and adaptation, including:
  o emissions pricing, including target-consistent emissions prices in the New Zealand context, and estimates of the future price of carbon
  o climate finance, and climate-change related disclosures and reporting
  o when considering new technologies, consideration of negative-emissions technologies, and also consideration of existing technologies suitable for wider adoption immediately\(^17\)
  o regenerative farming and other land-use practices
  o specific sources of emissions (eg, cold-start emissions)
  o methods for demand management
• capacity and constraints on action, including:
  o regulatory, policy and market designs that constrain businesses\(^18\)
  o the ability of sectors, regions, communities, and businesses to fund or implement measures
  o barriers to early adoption of technology
  o the functioning of renewable and non-renewable energy systems, and the capacity of energy systems to cope with more distributed energy
• ways of providing guidance, support (including financial support), and assistance to local government, iwi, communities and businesses to transition.

The importance of non-climate outcomes
Submitters supported, or sought stronger consideration of the impacts of climate change and ocean acidification, and the impacts of climate change policy interventions, on:

• the economy, including macro- and microeconomic effects, and indirect financial benefits from emissions reductions
• the environment, including impacts on threatened species and ecosystems, New Zealand’s natural capital, biodiversity and landscape change, and the long-term sustainability of recommended actions
• society, including impacts on human rights and vulnerable groups, and a need to minimise regressive or disproportionate impacts. Submitters sought consideration of impacts on particular indicators including food security, energy security, employment security, health/wellbeing and the functioning of rural communities
• te Tiriti partnership, including the protection of Māori cultural heritage, wahi tapu, sites of significance and communities, the consideration of Māori rights, interests and values, and the implications for Māori as a Treaty partner.

Submitters suggested particular ways of considering these impacts, including by carrying out regional, social and economic impact assessments; by identifying policy synergies, disconnects and inadvertent consequences; by paying particular attention to the sequencing of policy initiatives; and by placing emphasis on the linkages between factors.

\(^{17}\) It was also submitted that consideration of new technologies should not include genetic engineering methods (either new or conventional techniques).

\(^{18}\) Including, for example, water access and RMA constraints.
Analysis

The considerations in new section 5L, together with those in new sections 5W, 5X and 5Z, broadly relate to each of the most common themes in submissions.

<table>
<thead>
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<th>Existing provision (specific to emissions-reduction: 5Z, 5X(c), 5W)</th>
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<td>Best available information</td>
<td>• consider, where relevant, current available scientific knowledge</td>
<td>• have regard to the emission and removal of GHGs projected for the emissions budget period</td>
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<td>• have regard to a broad range of domestic and international scientific advice</td>
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<td>• have regard to the results of public consultation on an emissions budget</td>
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<td>New Zealand’s fair share of a global effort</td>
<td>• consider, where relevant, responses to climate change taken or planned by Parties to</td>
<td>• have regard to the responses to the threat of climate change by all Parties to the Paris Agreement or to the United Nations</td>
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<td>the Paris Agreement or to the United Nations Framework</td>
<td>Convention on Climate Change</td>
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<td>Convention on Climate Change</td>
<td>• have regard to New Zealand’s relevant obligations under international agreements</td>
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<td>A fair distribution of costs, benefits</td>
<td>• consider, where relevant, the distribution of benefits, costs and risks between</td>
<td>• have regard to the impact of the actions taken to achieve the 2050 target</td>
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<td>and risks within New Zealand</td>
<td>generations</td>
<td>• have regard to the distribution of those impacts across the regions and communities of New Zealand, and from generation to</td>
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<td>• have regard to the implications of that distribution for mitigating, and adapting to, climate change</td>
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<td>Specific ways of achieving climate</td>
<td>• consider, where relevant, technology that could be efficiently adopted and the</td>
<td>• have particular regard to how emissions budgets and the 2050 target may realistically be met, including consideration of—</td>
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<td>outcomes</td>
<td>likelihood of any advantages arising from early adoption of the technology</td>
<td>o the amount by which each GHG must be reduced to meet the emissions budget and the 2050 target</td>
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<td>o the amount by which GHG emissions must be removed to meet the emissions budget and the 2050 target</td>
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<td>o identification of key opportunities for emissions reductions and removals in New Zealand, and the principal risks and</td>
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<td>uncertainties involved with emissions reductions and removals</td>
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<td>• have regard to the need for emissions budgets that are ambitious but technically and economically feasible</td>
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<td>• have regard to existing technology and anticipated technological developments, including the costs and benefits of early</td>
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<td>adoption of these in New Zealand</td>
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<td>The importance of non-climate outcomes</td>
<td>• consider, where relevant, social, cultural, environmental, and ecological circumstances, including differences between sectors and regions</td>
<td>• have regard to economic circumstances and the likely impact of the Minister’s decision on taxation, public spending, and public borrowing</td>
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<td>• consider, where relevant, the likely economic effects</td>
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Broadly, we consider that the considerations in the Bill will require the members of the Commission to turn their minds to each of the matters raised by submitters, while leaving it open to them to consider other matters that may also be relevant. However, we recommend the addition of one additional consideration at new section 5L, that when performing its functions and duties and exercising its powers under the Bill, the Commission must have regard to the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori.

An additional change in new section 5Z concerning the Commission’s consideration of land-use implications is also recommended, and is discussed in the relevant section of this report.
**Recommendation**

Proceed with the insertion of new section 5L with an amendment to—

- require that when performing its functions and duties and exercising its powers under the Bill, the Commission must have regard to the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori.

**New section 5M Consultation**

**Explanation**

New section 5M allows the Commission to undertake any type of consultation that it considers necessary for the performance of its functions and duties.

**Submissions**

Submitters in general expressed the view that consultation and engagement will be critical to the Commission’s effectiveness, and submitted a range of views about how this should be secured, including:

- that consultation on all products should be a requirement in the Bill, including that consultation requirements should be specific about sectors to be consulted
- alternatively, that statutory consultation requirements are not the best way to secure effective engagement, and it would be better to allow the Commission flexibility in its processes (eg, to engage early, call for evidence, rather than consulting on proposals it has already formed).

Overall, there was a call for the establishment of clear communication channels between the Commission, central government agencies, local government, Māori and industry. There were also specific submissions for approaches that promote partnership, collaboration and co-design (especially with iwi/Māori but also with local government and affected sectors).

**Analysis**

We consider that it will be essential for the Commission to seek information from a wide range of people in order to form effective advice. Advice on emissions budgets should have particular consultation requirements.

**Consultation on emissions budgets**

The Bill requires the Commission, in new section 5Z, to “have regard to…the results of public consultation on an emissions budget” when preparing advice about an emissions budget under new section 5X, but does not prescribe the type of consultation that must be carried out.

For advice on emissions budgets, the Commission’s proposal should be informed by suitable public consultation before recommendations are made to the Government. This will help to make sure the recommendations are fit-for-purpose, and minimise the likelihood the Government will need to carry out extensive public consultation on the same proposals if it chooses to adopt the Commission’s recommendations.

The Bill could better provide for this by requiring that—

- before recommending an emissions budget, the Commission must publicly notify a proposal, allow adequate time for views to be heard, and consider matters raised in consultation.
- before setting an emissions budget, the Minister must be satisfied that adequate consultation has occurred (and if not must notify a proposal, allow adequate time for views to be heard, and consider matters raised in consultation).
We recommend changes in relation to consultation on an emissions budget in chapter 4.3 of this report (new sections 5X and 5Y).

**Flexible engagement on other functions**

Most other functions in the Bill do not prescribe specific consultation requirements for the Commission. However, new section 5ZE does require the Commission to consult widely with New Zealanders, including relevant sector representatives and affected communities, when preparing advice about an emissions reduction plan.

For most of the Commission’s advice, it is likely that the Government will need to further develop policies in response, including by carrying out appropriate consultation, and so requirements for particular types of formal consultation by the Commission could be unnecessarily constraining. It would be more useful to allow the Commission flexibility in how it gathers information and seeks input.

For example, the approach of the UK Committee on Climate Change has been to “call for evidence” early in the process of developing carbon budgets. In New Zealand, the Interim Climate Change Committee has engaged broadly through a range of channels, which have not necessarily involved consulting on formal proposals.

The Bill could better provide for this type of engagement by removing the specific consultation requirements at 5ZE and instead providing that the Commission at all times abides by principles of engagement and participation that apply to the exercise of its functions. We recommend changes in relation to consultation on emissions reduction plans in chapter 4.3 of this report (new section 5ZE).

The existing provision empowering the Commission to undertake any type of consultation that it considers necessary, including publishing and inviting submissions on discussion papers and draft reports, should remain. This provision is useful for avoiding doubt, including about whether the publication of drafts is consistent with the Commission’s duty to act independently in performing its functions.

**Recommendation**

Proceed with the insertion of new section 5M, with an amendment to—

- add a requirement that, in the performance of its functions, the Commission must—
  - proactively engage with persons the Commission considers relevant to its functions
  - where the Commission considers relevant, provide for public participation in order to assist the preparation of advice.

**New section 5N Commission must act independently**

**Explanation**

New section 5M provides that the Commission must act independently in performing its functions and duties and exercising its powers. Under the Crown Entities Act, a Minister responsible for an independent Crown entity may not direct the entity to have regard to or to give effect to a Government policy unless specifically provided in another Act [s 105 refers].

Subject to the two exceptions below, clause 5N of the Bill and section 105 of the Crown Entities Act mean that the Minister cannot influence, require, or direct how the Commission performs any of its functions, powers, or duties.
The Bill provides for two instances in which the Minister may direct the Commission to have regard to Government policy: for the purposes of the Commission—

- recommending unit supply settings of the NZ ETS
- providing advice about New Zealand’s nationally determined contributions (NDC) under the Paris Agreement (if it were asked for that advice).

The Commission provides its reports to the Minister, and the Bill requires the Minister to table each of the Commission’s reports in Parliament as soon as practicable, but within 12 weeks, after receiving it. The Commission must publish its reports.

**Submissions**

There was strong support among submitters for the Commission to produce independent advice and monitoring. Some submitters sought changes to strengthen the Commission’s independence in carrying out its functions, or to ensure that the Commission’s reports are effective in helping to hold the Government to account.

Some sought to enhance the independence of the Commission from Ministerial or other influence, for instance by specifying independence with respect to scientific matters and methods in the Bill.

Some submitters expressed concern about the Minister’s power to direct the Commission to give regard to Government policy in the preparation of advice about the NZ ETS or New Zealand’s NDC. These submitters were concerned that these provisions could compromise the Commission’s independence, and suggested that they be removed, more narrowly prescribed, or the directions required to be made public and tabled in Parliament.

**Analysis**

The Bill identifies two instances in which the Minister may direct the Commission to "have regard to" (although not to "give effect to") Government policy:

- for the purposes of the Commission advising on the operation of the NZ ETS, in which case the advice will be most effective if the Commission has regard to relevant policy, for example other measures that might be intended to reduce emissions in specific ways (such as a tree-planting programme) or policies that might depend on an activity with a certain level of emissions (such as a policy for security of supply)
- for the purposes of the Commission advising on New Zealand's NDC under the Paris Agreement, if the Government were to seek advice about this from the Commission. In this instance, it would be essential that the Commission had regard to foreign policy objectives, among its other considerations.

Having regard to Government policy means that the Commission must either consider it or take it into account. However, it does not have to implement or act in accordance with that policy.

Section 115 of the Crown Entities Act sets out a procedure for ministerial directions to Crown entities. Among other things, that section requires that:

- A Minister who proposes to give a direction to a Crown entity...must consult with the Crown entity before giving the direction to the entity.
- As soon as practicable after giving the direction, a Minister must—
  - publish it in the Gazette; and
  - present a copy of it to the House of Representatives.
We consider that the existing provisions provide appropriate constraints on the power to direct, and recommend that this power is retained.

**Recommendation**
Proceed with the insertion of new section 5N with no change.
4 Emission reduction

This section covers the following proposals:

- 2050 target
- Setting emissions budgets
- Role of Commission in setting emissions budgets
- Monitoring
- Effect of 2050 target and emissions budgets

4.1 New Sections 5O to 5R: 2050 target

Setting a 2050 emissions reduction target in primary legislation will provide a clear, enduring signal on New Zealand’s long-term GHG emissions reduction goals. A long-term target that is quantified will clearly signal the pace of New Zealand’s transition to a low-emissions, climate-resilient economy, providing important certainty for businesses and households.

The proposed 2050 targets in the Bill align with the emission reduction objectives of the Paris Agreement, indicate the direction of travel for New Zealand’s successive NDCs under that agreement, and establish New Zealand’s position as a global leader on climate change.

Most submitters (including 59 per cent of organisations who expressed a view on the 2050 target) supported separate targets (or pathways) for biogenic methane and all other gases. In general, submitters supported a net zero target for all gases other than biogenic methane. However, submitters had divergent views on the level of the biogenic methane component of the 2050 target, some seeking more ambitious reductions and others proposing less ambitious reductions.

New Section 5O Target for 2050

Explanation

New section 5O sets the 2050 target. The target requires that, by the calendar year beginning on 1 January 2050, net emissions of GHGs, other than biogenic methane, are zero and gross emissions of biogenic methane are at least 24% to 47% lower than 2017 levels. As an interim step, the 2050 target requires that by the calendar year beginning on 1 January 2030, gross emissions of biogenic methane are 10% lower than 2017 levels.

Submissions

Submissions on the target covered a number of areas. Many submitters commented on the form of the target, including:

- Setting a new GHG emissions reduction target in legislation
- The split between biogenic methane and all other GHGs
- Offsetting emissions at the national level by forestry
- The 2030 requirement for biogenic methane
- Offshore mitigation

Submitters also commented on the level of the target, including:

- The target level for biogenic methane
- The target level for all other GHGs.

These topics are discussed in turn below.
Some submitters also called for IAS emissions to be included in the 2050 target. This is discussed in Chapter 7: Additional recommendations.

**Target form: Legislating a GHG emissions reduction target**

Most submitters supported legislating a new 2050 emissions reduction target to provide long-term predictability of New Zealand’s climate change mitigation efforts. Some submitters noted that the strength of the signal could be diluted if the 2050 target was not binding, or if the 2050 target was frequently reviewed and amended. Some submitters supported the proposed 2050 target only on the proviso that there would be adequate transitional support, and engagement with the agricultural sector and local Government.

Some submitters recommended that the 2050 target be set by Order in Council (i.e., through regulations), to enable the Commission to provide advice on the 2050 target before it is enacted or to allow changes to the 2050 target as a result of future target reviews.

Some submitters considered that more analysis is needed before a decision on the target is taken, in particular to address the costs of inaction. Many of those submitters considered that this could be undertaken by the Commission. The PCE recommended that the 2050 target be confirmed only after a review from the Commission. This was suggested as a means of helping to secure cross-party support for the target.

**Target form: split between biogenic methane and all other GHGs**

Most submitters supported the distinction between biogenic methane and all other GHGs in the 2050 target, including 59 per cent of organisations who expressed a view on the target (or 35 per cent of all organisations). A smaller proportion of submitters (24 per cent of those organisations that expressed a view) preferred a single net zero target that did not distinguish between biogenic methane and all other gases.

The PCE also proposed a two-basket approach, but one that distinguishes fossil emissions from biological emissions and removals. Our view is that this approach is less appropriate for addressing a temperature goal, because the “biological” basket would treat all three of our major GHGs (with their different atmospheric lifetimes) as interchangeable. It would not address the long- and short-lived split that would maintain consistency with a temperature goal. It would not address the known problems with the metrics used to calculate equivalence between emissions of different gases, raising the risk that long-lived and short-lived emissions could be substituted in a way that is detrimental to the desired climate outcomes (eg, if methane removals were used to offset carbon dioxide emissions from forest harvesting).

**Target form: Offsetting emissions at the national level**

The target formulation in the Bill does not provide for biogenic methane emissions to be offset by tree planting at the national level.

There were concerns from the agriculture sector that not allowing forestry to offset the biogenic methane target would result in an uneven burden across different sectors, and that it was inequitable that gross emissions could potentially grow for all other GHGs except biogenic methane.

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19 For example, Alliance thought it was problematic that “all fossil fuel users will be able to continue to offset their emissions by purchasing forestry credits as this essentially allowed them to store their carbon waste permanently on otherwise productive land.”
Many submitters commented that a fairer approach would see farmers having the same access to tools as other emitters to meet their commitments. Many sought to use forestry to meet their commitments, and to be able to recognise trees on farm.

Offsetting is discussed in more detail in relation to new Section 5W.

**Target form: The 2030 requirement for biogenic methane**

A small number of submitters supported the 2030 target for biogenic methane in the Bill.

Many submitters, including those from the agricultural sector, felt there should also be a 2030 requirement for the “all other gases” component of the target. Submissions that supported an additional 2030 requirement set out that it would:

- Provide for equal visibility of the level of action for all gases by 2030.
- Allow early emissions reductions to be prioritised as a contribution to the global response and to avoid environmental ‘tipping points’ (e.g., Antarctic ice sheet collapse) and impacts on our Pacific neighbours.

Those opposed to a 2030 requirement for biogenic methane submitted that:

- this would limit the Commission in advising on its preferred mitigation pathway
- a 2030 reference point for biogenic methane only would potentially distort New Zealand’s overall mitigation efforts and introduce the potential for a less efficient, higher-cost decarbonisation pathway.

**Target form: Offshore mitigation**

Some submitters noted the inconsistency in the drafting of the Bill between the ability to use offshore mitigation to achieve emissions budgets, but not for meeting the 2050 target.

The vast majority of submitters did not recommend allowing the use of offshore mitigation to meet emissions budgets (discussed further in relation to new section 5W).

**Target level**

**All GHGs except biogenic methane**

The majority of submitters that commented on the “all other gases” target supported the proposed level. A very large number of individual submitters, and some organisations proposed that the date for achievement of the target be brought forward to increase its ambition. Motu submitted that “In New Zealand, long-lived GHGs (notably carbon dioxide) must reach net zero as soon as possible this century and achieve net negative pathways if possible.”

Many submitters raised the need for more ambitious targets for a range of reasons including:

- helping improve intergenerational equity

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This includes but is not limited to: Fonterra; Fertiliser Association; Taranaki Regional Council; Rabobank; Beef and Lamb; 50 Shades of Green; George Morrison; Whakapuawai Farms Limited; Katikati - Waihi Beach Residents and Ratepayers Association; The Gums; Solray Systems (+ needs to set out to promote a carbon reduction or encourage substitution of fossil carbon fuels with sustainable zero carbon (biofuel) alternatives); Hauraki Coromandel Climate Action Incorporated; BDO; ACRE – (Agricultural Communities Respecting the Environment); Auckland Meat Processors Limited; Farmabull Ltd Alliance Group Ltd; Engineers for Social Responsibility Inc; Agricultural Communities Respecting the Environment; AFFCO NZ Limited; Environment Canterbury; Ovation NZ Ltd; Meat Industry New Zealand (who noted at some point, “net zero” will need to change to some level of “gross” or absolute CO2 reductions).
• recognising the climate change risks to our Pacific neighbours, and potential impacts on human mobility
• protecting New Zealand’s natural character, waterways, and indigenous flora and fauna
• enhancing health and other co-benefits from decoupling our economy from GHG emissions.

Around one quarter of organisations who submitted on the target proposed a net zero target for all GHGs by 2050 (or earlier). The main reason provided for this is that all sectors of the economy should act together and that burden-sharing should be distributed evenly.

Other formulations proposed included setting no targets or setting the target as a range over time (e.g., a 50% reduction in all GHGs by 2050, and reaching net zero emissions of all GHGs in the second half of the century). Some suggested adding New Zealand’s NDCs as targets under the CCRA.

A few submitters expressed concern that the current drafting implies the 2050 target is to be maintained in “each subsequent calendar year”. A common view was that the targets should accommodate potential for net-negative-emission pathways after 2050, and potentially earlier.

In addition, the New Zealand Aluminium Smelters Limited submitted that the wording of ‘zero’ in section 5R did not reflect the reality of fluctuation and measurement error in the determination of national emissions including forestry and the associated cycle of harvesting and land management – noting that in practice it will be nearly impossible to be at exactly zero each year. They further suggest that the net zero position be based on a multi-year average of three or more years, rather than being the value that must be met in each and every year.

Some submitters recommended setting a 2030 level for gross non-methane emissions reductions – including requiring reductions of 45-50 per cent below 2017 levels by 2030.

**Biogenic methane**

Most submissions from organisations supported a biogenic methane target, but not the proposed target level or approach to setting targets.

A commonly held concern of agricultural submitters was the limited options available to farmers to reduce biogenic methane emissions other than by reducing stock numbers, and that this would have adverse economic impacts. Some considered this would have adverse consequences including fewer jobs, loss of trade-competitiveness and difficulties in meeting global and domestic food supply with “emissions leakage” (contributing to higher global GHG emissions). Some agricultural submitters agreed with the lower end of the target range for biogenic methane and some iwi submitters accepted the range21.

In contrast, some (mostly non-agricultural) submitters22 considered that the costs of inaction or a delayed transition would be far greater than the costs of action in the short term, and that diversification away

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21 For instance, Te Rūnanga o Ngāi Tahu recommended “Retain the proposed 2050 target, including separate methane targets, provided that target reviews are restricted to changes of equal or greater ambition.” Te Arawa Primary Sector Incorporated supports “the reduction in biogenic methane in particular the 10% reduction by 2030 and the current 24 to 47% reduction by 2050 in principle However, this support is not unconditional and without investment by the Government and policy that incentivises private investment into infrastructure change across the primary industry, the 2050 target is a hollow promise TAPS asserts that without a detailed policy framework and investment plan by the CCC on the detailed transition plan for the agricultural sector within 2-years of establishment then the pastoral sector’s current proposal of 10 to 22% reduction in biogenic methane by 2050 should be adopted.”; FOMA, who represent Māori landowners and businesses totalling around $11.5b in assets, had an oral submission that clarified they accepted the biogenic methane range.

22 For example, this included submissions from Extinction Rebellion te Whanganui-a-Tara; College Of Nurses Aotearoa (Nz) Inc; Climate Justice Taranaki; Greenpeace; Low Carbon Kapiti, Mana Wheuna Kaitiaki Forum; Plant Based Initiative; Forest and Bird.
from ruminant animals would have co-benefits for human health, water quality, soil integrity and animal welfare. Motu submitted that the top of the range should not be limited if new technologies make further reductions feasible while safeguarding food security.

A number of submissions from the agriculture sector recommended that the target for biogenic methane be set to limit the associated warming from these emissions at current levels. Many cited the PCE’s 2018 note on New Zealand’s methane emissions from livestock, which demonstrates that a reduction of 10 to 22% in biogenic methane emissions below 2016 levels by 2050 would limit warming to current levels, while other recent studies suggested 0.3% per year reduction to achieve this, corresponding to around 10% reduction by 2050. The PCE, in his written submission to the Committee, states that:

“I would like to make it clear that the ‘no additional warming’ outcome was used for modelling purposes and is not, in my view, a sufficiently ambitious target”.

The scenarios reported by the IPCC also indicate a reduction in the warming effect from biogenic methane in pathways limiting global warming to 1.5 degrees Celsius.

Alternative levels for the biogenic methane target suggested by submitters from the agriculture sector include:

- 24 per cent, based on the lower end of the proposed range
- 10 per cent by 2050 based on a 0.3 per cent reduction per year, equating to a 3 per cent reduction by 2030
- 10 to 22 per cent below 2016 levels by 2050, so that it contributes no further additional warming (above that already caused by past emissions).

A common theme raised was how the IPCC findings in the Special Report on Global Warming of 1.5 °C were applied in constructing the 2050 target, and in particular how they informed the target range in the Bill of a reduction of 24 to 47 percent in biogenic methane. Specifically, some were concerned the IPCC pathways should not be used for ‘national strategies’, and that these findings had been used explicitly in relation to the 2050 target range for biogenic methane, but not for other gases. It is true that the IPCC reports are not prescriptive, but they are intended to be policy-relevant.

**Analysis**

*Target form: Legislating a GHG emissions reduction target*

It is intended that the 2050 target is set in primary legislation as opposed to through regulations or gazette notice.

Setting a GHG emissions reduction target in primary legislation will provide a clear signal on New Zealand’s long-term emissions reduction goals. It will give New Zealanders confidence that climate change policies and the long-term emissions reduction pathway will remain stable and predictable and continue delivering prosperity. Mike Thompson, who has led the development of emissions budgets for the United Kingdom’s Climate Change Committee, submitted that “The adoption of a statutory long-term emissions target provides clear direction for businesses, policy-makers and civil society”.

The Bill allows the target to be revised, but only in specific circumstances. This includes requiring that the Commission be satisfied certain conditions are met before recommending a change. This is to ensure the target’s long-term durability. The Bill does not prescribe what the Government’s response to a target

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23 Te Urunga o Kea (Te Arawa Climate Change Working Group); New Zealand Psychological Society; Low Carbon Kapiti (30% by 2030).
recommendation would be. Amending the target, in response to a recommendation by the Commission, would require a new amendment Bill being introduced to the House of Representatives.

**Target form: split between biogenic methane and all other GHGs**
The Bill is intended to provide a framework for New Zealand to reduce emissions consistent with limiting global warming to 1.5 degrees Celsius.

The target in the Bill distinguishes between biogenic methane and all other gases. This formulation reflects the split between New Zealand’s main sources of long- and short-lived GHGs. Splitting gases on this basis is consistent with setting a target based on a temperature goal. Given the focus on the Bill on contributing to limiting global warming to 1.5 degrees Celsius, we recommend maintaining the current split of gases in the target. While other formulations are possible, the formulation in the Bill is the best fit for a target set to be consistent with a temperature goal above pre-industrial levels.

**Target form: Offsetting emissions at the national level**
As discussed above, the 2050 target groups together biogenic methane and all other GHGs to meet the overall temperature goal set out in the purpose of the Bill.

This grouping has implications for where removals of carbon dioxide from the atmosphere can “offset” emissions:

- The "net" component of the target for gases other than biogenic methane, which includes carbon dioxide, allows removals of carbon dioxide to offset emissions of these gases at 2050. It would also allow a limited amount of offsetting with offshore mitigation.
- The "gross" component of the target for biogenic methane can't be accounted for at the national level by removals of other gases, and there is currently no technology that removes methane from the atmosphere.

This means that forestry offsets can only be counted towards the net zero component of the target. The other target component requires gross reductions in emissions of biogenic methane, and therefore means that this cannot be met using offsets at the national level. The decision to include gross target components for biogenic methane reflects the fact that forestry planting cannot remove emissions of biogenic methane from the atmosphere, and that no technology currently has this capability. This is distinct from the approach taken to emissions budgets, which provides greater flexibility (see new section 5V).

Governments will face decisions about the policies they implement to meet the target, and these responses are not dictated by its form. For example, for example, if agricultural emissions were to face an emissions price, under current settings in the NZ ETS, the liability for those emissions could be offset by earning New Zealand Units in the NZ ETS for on-farm carbon sequestration from eligible forests.

The PCE submitted that, if the target proposed in the Bill is retained, then a limit on the use of forestry offsets should be set on the basis that this would “reduce the risks of sink impermanence and incentivise a higher level of gross emissions reduction.” Such a limit would provide additional certainty both to the forestry sector and to emitting sectors on the contribution that emissions reductions and removals will make to meeting the target. There is insufficient evidence to recommend placing a limit on the use of forestry offsets to meet the 2050 target or emissions budgets at this stage (or recommend to include gross reductions for all other GHGs as well as biogenic methane).

However, we consider that it would be sensible to provide for the Commission to consider the potential implications of land use changes for communities (i.e., when advising on emissions budgets and emissions
to consideration of the risks and challenges associated with an afforestation-reliant transition path. This is discussed further in new section 5W of this paper.

**Target form: The 2030 requirement for biogenic methane**

The 2050 target for biogenic methane in the Bill has been set as a range. This recognises that there is uncertainty about the best target for New Zealand at 2050. The 2030 requirement for biogenic methane was included in the Bill to provide certainty in the medium-term for the emissions reductions required in this gas. We recommend that this formulation be retained in the Bill.

**Target form: Offshore mitigation**

The 2050 target should be met primarily through domestic action to provide a signal of New Zealand’s domestic transition to a low-emissions, climate resilient economy. Offshore mitigation provides an important flexibility mechanism, and is intended to be available for use against the net zero component of the 2050 target. The definition of net emissions in the Bill does not provide for the use of offshore mitigation. We recommend that new term ‘net accounting emissions’ is used to account for the use of emissions reductions, removals, and offshore mitigation in meeting the emissions budgets and the 2050 target. This will also help to avoid confusion with the New Zealand GHG Inventory. Offshore mitigation is discussed in more detail in relation to new section 5W.

**Target level**

The levels of reduction required by the target:

- are consistent with the purpose of the Bill and with a global achievement of the 1.5°C temperature goal
- reduce the warming caused by our methane emissions, recognising that long-lived gas emissions will take longer to reach a similar level of impact
- recognise that the exact level of reductions needed, and what is possible, will become more certain over time
- provide an interim target to give certainty in the near term
- are likely to be achievable (as found by the Biological Emissions Reference Group, BERG24, and economic modelling undertaken).

In scenarios assessed by the IPCC consistent with staying within 1.5°C warming with limited or no overshoot:

- global emissions of carbon dioxide reduce to net zero around 2050, and below zero (negative) thereafter
- global emissions of agricultural methane are also deeply reduced. The central (interquartile) range of these reductions is 11-30% below 2010 levels in 2030, and 24 to 47% below 2010 levels in 2050.

Economic modelling was commissioned in 2018 from Concept, Motu and Vivid (CMV) and the New Zealand Institute of Economic Research (NZIER) to evaluate the feasibility and impact of a potential 2050 emissions reduction target. This has helped inform what some of the potential impacts may be, but it

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24 The BERG included Beef+Lamb; Federated Farmers; Fonterra; DairyNZ; Deer Industry NZ; Horticulture NZ; the Fertiliser Association; MPI and MfE.
should be treated with caution.\textsuperscript{25} A range of qualitative economic studies also complement the modelled findings.\textsuperscript{26}

The costs and benefits of the transition to a low-emissions economy for New Zealand and the world cannot be known with any precision. They fundamentally depend on very uncertain factors including long-term damages from climate change, evolution of low-emissions technologies, and actions taken in other countries. Therefore, modelling in this area depends on a range of assumptions about the economy to provide an idea of the plausible transition pathways and their potential economic impacts. Outputs from the modelling should not be seen as a prediction of the future, nor as a prescription which New Zealand must follow. The Government and other actors will face a range of choices over the pathway to meet the Bill’s targets.

The modelling commissioned by the Ministry found that meeting any of the initially proposed emissions reduction targets at manageable cost will require high levels of innovation across the economy, decarbonisation of agriculture, transport, process heat and electricity generation, and substantial afforestation.

The levels of afforestation have been a prominent theme in submissions. There is currently around 1.7 million hectares of production forestry. Slightly less than 0.5 million hectares of this was established between 1990 and 2015. In comparison, total pasture land was approximately 10 million hectares in 2015, of which approximately 8 million hectares was used for sheep & beef farming and 2 million hectares for dairy. This excludes some 1.5 million hectares of unproductive scrub and other farm land.

In the Concept, Motu, Vivid (CMV) modelling, land use change is determined by the model in response to emissions price and other drivers. For a target broadly consistent with the targets in the Bill, the three modelled scenarios see between 1.4 and 1.7 million hectares of new production forestry by 2050.\textsuperscript{27} The net reduction in productive land used for farming and horticulture is between 0.9 and 1.3 million hectares.

In the NZIER modelling, each target scenario had an assumed amount of sequestration from forestry. This can be translated to an implied area of afforestation. The two scenarios used to give an indicative range of impacts for the target in the Bill assume sequestration of between 19 and 23 million tonnes CO\textsubscript{2}-e in 2050. This translates to an estimated 1.0 to 1.3 million hectares of new forestry, assuming it is all production forest.

The increase in forestry is accompanied in the modelling by decreases in land used for agriculture and horticulture, in particular land used for sheep and beef production. Modelling indicates that the largest reductions in land used for agriculture and horticulture could be Canterbury, Otago and Manawatu-Whanganui. As with all model outputs, these results should not be seen as predictions of the future. The results are dependent on the model and the assumptions uses. The modelling indicates that ongoing economic growth is consistent with meeting the proposed targets, potentially at a slower rate. NZIER modelled a range of scenarios and targets. The model runs that are most consistent with the target, and

\begin{footnotesize}
\textsuperscript{26} This includes the following available on the Ministry for the Environment website: MfE summary report released at consultation Zero Carbon Bill economic analysis: A synthesis of 2050 economic impacts; Emissions pricing impact on innovation and competitiveness: A review of the international literature; The co-benefits of emissions reduction: An analysis; and Sense Partners: Countervailing forces: Climate targets and implications for competitiveness, leakage and innovation.

\textsuperscript{27} One scenario also sees 0.7 million hectares of new native forest in addition to 1.4 million hectares of new production forest.
\end{footnotesize}
gave results that more closely align with other evidence we hold indicated an average GDP growth rate of 1.9 to 2.0 percentage points under the proposed target, compared with 2.1 percentage points under the current 2050 target. This means that annual GDP would grow from $259 billion in 2017 to $494 to $511 billion in 2050, compared with $522 billion under the current 2050 target. The modelling demonstrates that economic impacts would be lower if the uptake of low-emissions technologies and afforestation were higher than assumed in these scenarios.

NZIER’s modelling excludes many potential benefits of climate action and is likely to overstate the impacts. An expert peer review concluded that the costs estimated by NZIER are likely in the high end of the probable range.

The UK Committee on Climate Change (UK CCC) note in their submission that “[their] analysis of the UK net-zero target (which goes further than the Bill’s proposed target by covering all GHGs and including aviation and shipping) demonstrates that it can be achieved based on known technologies, alongside improvements to quality of life and with a low (possibly positive) economic impact”. Their analysis indicates an overall cost of 1–2% of GDP in 2050. This is the same level of cost that was estimated in 2008 for a target of an 80% reduction in emissions of all GHGs, demonstrating the impact of innovation and technological learning in reducing costs. Further, the UK CCC noted that monetised estimates of co-benefits for health and well-being are of a similar magnitude to this estimated cost.

As it is currently drafted, the target for all other gases in the Bill will only be met if net emissions are exactly zero in each calendar year from 2050. We recommend changing the drafting to allow the target to be met as long as emissions of these gases are less than net zero in each calendar year from 2050.

**Biogenic methane**

The report of the BERG assessed the mitigation potential of both currently available mitigations (mainly on-farm management practices) and future mitigations (i.e., novel technologies not currently developed). The assessment covered emissions from pasture-based livestock systems, and includes emissions of biological methane and nitrous oxide.

The BERG report found that when individual options are combined into mitigation ‘packages’, total biological emissions can potentially be reduced by 10 to 21% in 2030, and by 22 to 48% in 2050, relative to MPI baseline projections. These ranges are contingent on technological breakthroughs and high adoption rates by farmers of the mitigation options assessed.

The range of biogenic methane reductions in the 2050 target considers the global pathways limiting global warming to 1.5 degrees Celsius (with limited or no overshoot), as assessed in the IPCC’s Special Report on Global Warming of 1.5 degrees. The 2050 target also considers the BERG report and economic analysis to inform the near-term biogenic methane reductions by 2030.

The current drafting of the interim target for 2030 means that it would only be achieved if biogenic methane emissions are exactly 10 per cent below 2017 levels in 2030. We propose a change to clarify that

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28 The results presented here are for “Option 2” modelled by NZIER. This was a fungible target (meaning biogenic methane emissions can be substituted with emissions and removals of other GHGs), with a 25% and a 50% reduction in biogenic methane by 2050, alongside net zero emissions of all other GHGs. The non-fungible scenarios have not been used, as they produced emissions prices significantly out of step with the input assumptions on afforestation and innovation, leading to exaggerated impacts. The Option 2 model runs assumed forestry sequestration of 19 to 23 MtCO2e, while generating average emissions prices of $280 to $520 over the period 2020 to 2050. This is more consistent with other evidence on the link between emissions prices and afforestation (while still likely exaggerating the impacts).
the 2030 target would still be met if reductions of biogenic methane achieved were greater than 10 per cent. This would better reflect the intent of the target.

*Flexibility mechanisms in the Bill*

To address the unknown challenges in meeting the 2050 target, the Bill contains ‘safety valves’ to enable adjustments to the domestic path under specific circumstances. This includes periodic reviews of the target (discussed in new Sections 5P and 5Q) and access to offshore mitigation. Offshore mitigation is discussed below in relation to the 2050 target, and in new Section 5V in relation to emissions budgets.

It will be important for the Government to consider all of the abatement tools available to meet the 2050 target, including the NZ ETS which provides volumes of removals to the market. Future Governments will face decisions about the policies they implement to achieve the target, and these responses are not dictated by the form of the target. For example, if agricultural emissions were to face an emissions price, under current settings in the NZ ETS, the liability for those emissions could be offset by earning New Zealand Units in the NZ ETS for on-farm carbon sequestration from eligible forests.

**Recommendation**

Proceed with the insertion of new section 5O with amendments to—

- provide 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
- provide for the all other GHGs (except biogenic methane) component of the 2050 target to be met if emissions are no greater than zero by 2050
- provide for offshore mitigation and other removals (eg, carbon capture and storage) to be counted towards the net zero component of the 2050 target.

**New Section 5P Target reviews**

**Explanation**

New section 5P requires the Commission to review the 2050 target when it prepares advice on setting an emissions budget for a period beginning on or after 2036. The Commission must also review the 2050 target at any other time that the Minister requests a review.

**Submissions**

Of those submitters that commented most submitters supported the ability to review and amend the 2050 target in certain circumstances. In its submission, Client Earth emphasised the importance of a stable, long-term foundation in the 2050 target, and considered section 5Q(2) imposes a “sufficiently high threshold to ensure that these five-yearly reviews will be expected, as a rule, to pass without any recommendation being made.”

A small number of submitters expressly opposed provision for the Commission to review the target, on the basis that certainty that the target would be maintained is important to support the transition. Further, some submitted that the target should only be amended to allow more ambition (in line with the Paris Agreement) or if there was a super-majority in Parliament.

Around 30 submitters (eg, Federated Farmers and the PCE) considered the proposed 2050 target should only be set in law following recommendation by the Commission, to allow their expert advice and to help achieve enduring cross-party support.

Another alternative suggested by some submitters was to bring forward the timeframe for the Commission’s review (eg, to 2021). In contrast, others agreed with the proposed timing, as this allowed time for the Commission to be “fully integrated into the political lifeblood of New Zealand”.

Departmental Report on the Climate Change (Zero Carbon) Amendment Bill 2019 67
Some submitters recommended a shorter timeframe for Government to respond to the Commission’s recommendations following target.

The use of the Minister’s review at any time was queried as this could inject unwelcome uncertainty into existing emissions budgets, noting that if a target is amended this may mean that existing emission budgets would need to change.

Another point raised was that, if the Commission provides public recommendations on target amendments, these should be released through a robust disclosure process – for instance after the NZ ETS market closes for the day and ensuring the information is publicly available.

**Analysis**

The ability to review the 2050 target within the Bill framework is a necessary flexibility mechanism to ensure the target remains suitable given uncertainties regarding New Zealand’s domestic transition pathway over time.

We consider it is important to lock in areas where there is consensus, including setting the 2050 target now. We do not recommend seeking Commission advice on the 2050 target before it is set in law. The evidence and analysis drawn on when developing the 2050 target is considered sound, and many stakeholder views were taken into consideration during policy development. The views heard as part of the submissions process are similar to those heard through earlier public consultation.

The Commission will provide its first review to the Minister by the end of 2024. We do not recommend adjusting this timeframe.

The Bill does not preclude emissions budgets from being adjusting if there is an amendment to the 2050 target. We do not recommend including specific market disclosure requirements in the Bill in relation to the Commission’s release of its recommendations following target review. This can be achieved outside of the Bill.

The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

**Recommendation**

Proceed with the insertion of new section 5P with amendments to—

- require the Commission to advise on if, and if so how, emissions from international shipping and aviation should be included in the 2050 target and emissions budgets as part of its target review in 2024
- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

**New Section 5Q Recommendations to amend 2050 target**

**Explanation**

New section 5Q allows the Commission to recommend a change to the 2050 target as a result of a review. However, the Commission may recommend a change to the 2050 target only if the Commission is
satisfied that there has been a significant change in a specified factor that justifies the change to the target.

Submissions
Submitters made a number of suggestions about requirements on the Commission process for recommending changes to the 2050 target, including:

- additional transparency around the matters the Commission is required to consider when reviewing the target
- restrictions to ensure that changes to the target can only occur when there is strong evidence supporting the change, the process has been transparent, and consultation has occurred.
- where the Commission recommends a change, that it be required to state which of the matters in clause 5P(2) has changed, why the change is significant, and how the change was taken into account in the review of the target
- additional matters where significant changes warrant a recommendation to change the target, such as international emissions leakage, food production, the costs of inaction, and the long-term impacts of land use change
- that the Commission should take into account the National Adaptation Risk Assessment and NAP when considering whether the 2050 target should be amended
- that there should be an “exceptional circumstances” test when recommending changes to the target.

As noted earlier, a broad range of organisations have submitted on the ability to offset GHG emissions with forest planting in respect of both emissions budgets and the “all other gases” component of the 2050 target. In respect of the target for all other gases, submitters raised two main concerns:

- That there is no limit on the ability to offset emissions with forestry for all other GHGs except biogenic methane, and this could lead to unnecessary delays in emissions reductions for some sectors of the economy resulting in inequitable distribution of the mitigation burden
- That significant land use changes, including afforestation, could lead to negative impacts on communities, particularly in rural areas.

Analysis
The Commission is able to review the target when it provides advice on emissions budgets (with the first review being completed by 31 December 2024), or at any other time requested by the Minister.

The Minister is required to table the review in the House of Representatives, and the Commission is required to make the review available to the public after it has been provided to the Minister. We consider these requirements provide for sufficient transparency in the review process.

We also consider the list of factors that could justify a recommendation to change the target, is sufficiently broad to capture relevant matters.

It is important to not constrain the Commission when reviewing the target, and we do not propose further requirements on how it undertakes its review, or the contents of the review report.

Given the strong views expressed by submitters on the potential impact of future land use change incentivised by the target, we propose to allow for the Commission to consider the form of the target in its reviews, including:

- what the target should be (including the types, sources and sinks of GHGs it applies to),
- how the target should be met (including through reductions, removals and offshore mitigation).
Recommendation
Proceed with the insertion of new section 5Q with an amendment to—

- allow for the Commission to consider the form of the target in its reviews, including:
  - what the target should be (including the types, sources and sinks of GHGs it applies to)
  - how the target should be met (including through reductions, removals and offshore mitigation)

New Section 5R Government response to target review recommendations

Explanation
New section 5R requires the Minister to respond to the Commission, within 12 months, if the Commission recommends changing the 2050 target.

Submissions
Some submitters sought greater transparency regarding what the Government’s response to Commission recommendations must consider.

Some submitters expressed concern that Commission advice to change a target is not a prerequisite for a Ministerial decision to change the target. It was proposed that the Bill should require the Minister to secure a recommendation from the Commission before revising the 2050 target, and to explain departures from the Commission’s advice before revising the 2050 target or an emissions reduction plan.

Other suggestions for the Government’s response to the Commission’s target review recommendations included:

- requiring cross party-support (e.g., 80 percent super majority of MPs votes) for any changes to ensure that the targets withstand the electoral cycle
- preventing target changes without first obtaining advice from the Commission
- requiring the target to be amended through Order in Council or through affirmative resolution procedure
- providing a mechanism for the revision of existing emissions budgets, when the 2050 target is changed.

Analysis
We consider that the Minister should respond to the Commission’s recommendations on the 2050 target (including if the Government departs from the Commission’s advice) in the same way as it does with emissions budgets. However, it is not possible to further specify that future Governments must amend the target through an amendment Bill. Parliament is supreme and legislation cannot tie future Governments to one particular course of action.

We also recommend that changes to the target are subject to a full legislative process to ensure that they receive sufficient Parliamentary scrutiny.

We do not recommend requiring a super-majority before target amendments are made, as this has only been used in the Electoral Act 1993 for matters of constitutional democracy.

The requirements for Government responses to advice of the Commission are discussed further in chapter 7.2 of this report. We recommend changes to improve consistency, including requiring the Government’s response to target review recommendations to give reasons for any departure from the Commission’s recommendations and be published.
Recommendation
Proceed with the insertion of new section 5R with an amendment to—

- require the Government’s response to give reasons for any departure from the Commission’s recommendations and for the response to be published.

4.2 New Sections 5S - 5W: Setting emissions budgets
Emissions budgets can be understood as interim targets or ‘stepping stones’ to New Zealand’s 2050 emissions reduction target.

A system of emissions budgets will help to manage the transition to a low-emissions and climate-resilient New Zealand and avoid any abrupt changes in policy out to 2050. They will serve as a valuable tool for tracking progress and determining whether New Zealand is on track to meet its domestic emission reduction targets. In doing so, they will also create accountability across successive Governments.

By indicating the pathway to the longer-term emissions reduction target, emissions budgets will also operate as a market signal, providing businesses (particularly NZ ETS participants) and households with greater predictability and subsequently driving investment in low-emissions technology and innovation.

New Section 5S Interpretation
Explanation
New section 5S sets out definitions that apply in new subpart 2, namely:

- advice
- banked
- borrowed
- net budget emissions
- removals.

Submissions
Very few submissions specifically commented on terms defined in section 5S.

Banked
The definition of “banked” references section 5ZC(1). Two submissions suggested that this provision is amended to clarify the technical effect of banking (eg, what it will mean for the next emissions budget period).

Borrowed
The definition of “borrowed” references section 5ZC(1). Two submissions suggested that this provision is amended to clarify the technical effect of borrowing (eg, what it will mean for the next emissions budget period).

Net budget emissions
One submission notes that this definition, as currently drafted, excludes emissions from the land use, land use change and forestry sector and recommended that this should be amended.

Removals
Two submissions commented on the definition of “removals”, noting that:

- the definition should be applied consistently to both the 2050 target and emissions budgets,
• it should not be limited to removals resulting from land use, land use change and forestry. The definition should also encompass industrial removals, carbon capture and storage, and new categories of removals (e.g., that may result from technological and scientific advancements).

Other
Some submissions also recommended additional definitions, namely:

• carbon dioxide equivalent
• economic effects (note: it was suggested that this includes carbon leakage)
• economically feasible
• total emissions

Analysis
Banked
This will be addressed in relation to section 5ZC.

Borrowed
This will be addressed in relation to section 5ZC.

Net budget emissions
As offshore mitigation can be counted towards both the net zero component of the target and emissions budgets, there is no need for separate definitions of “net emissions” and “net budget emissions”.

We recommend removing the definition of “net budget emissions” from new section 5S. A new definition of “net accounting emissions” will then be added to clause 6(1) that applies to both the net zero component of the target and emissions budgets, and is defined in relation to existing definitions of gross emissions and offshore mitigation. The use of the term “net accounting emissions” will also distinguish it from the phrase “net emissions” as used in New Zealand Greenhouse Gas Inventory reporting.

Removals
Removals are currently defined as “carbon dioxide equivalent GHGs that are removed from the atmosphere”. This definition already addresses submitters’ concerns, as it is deliberately non-specific to allow for the development of new technologies to remove GHG emissions from the atmosphere. Under this definition, removals are not limited to those resulting from the land use, land use change, and forestry sector (LULUCF).

Recommendation
Proceed with the insertion of new section 5S with amendments to—

• remove the definition of “net budget emissions” (and replace with a different term at clause 6(1)).

New Section 5T Purpose of this subpart
Explanation
New section 5T states the purpose of emissions budgets. It stipulates that the Minister must set a series of emissions budgets with a view to meeting and maintaining the 2050 target, and providing greater predictability by giving advance information on the emissions reductions and removals that will be required. This purpose applies to new subparts 2, 3 and 4.
Submissions

Very few submissions commented on the purpose of emissions budgets. Of those who did comment, many of these suggested that emissions budgets should be explicitly aligned with the Bill’s overarching purpose, which is to contribute to global efforts to limit average temperature rise to 1.5 °C above pre-industrial levels.

A smaller number of submissions called for:

- the purpose of emissions budgets to align with the 1.5 °C purpose and the cumulative budget for 2022-2050
- the purpose statement to require emissions budgets to be progressively ambitious, noting that this would guard against delaying reductions and causing economic shocks closer to 2050
- emissions budgets to have a direct relationship with New Zealand’s NDCs under the Paris Agreement (i.e. that emissions budgets will meet NDCs).

Analysis

There is value in aligning the purpose of emissions budgets with the 1.5 °C temperature goal

The Bill’s purpose is to provide a policy framework that contributes to the global effort to limit the global average temperature increase to 1.5 °C above pre-industrial levels (clause 4). This will guide the interpretation of the Bill as a whole and ensure that the 1.5 °C temperature goal is appropriately considered, including as decisions are made on emissions budgets and emissions reduction plans.

However, there are also benefits in explicitly aligning emissions budgets with the overall purpose of the Bill. This 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 °C temperature goal remains an active consideration. It will also prioritise early emissions reductions, rather than delaying action.

It is not necessary to require the Commission to calculate New Zealand’s cumulative budget for 2022-2050

The IPCC estimated the remaining global carbon budget from 2018 if the world is to limit average temperature rise to 1.5 °C. A number of submitters noted that to limit New Zealand’s contribution to the 1.5 °C temperature goal requires New Zealand to emit no more than our equitable share of this remaining carbon budget.

While there is value in identifying New Zealand’s cumulative budget for 2022-2050, we consider that amending the purpose of emissions budgets to explicitly reference New Zealand’s contribution to the 1.5 °C temperature goal will ensure that relevant matters are taken into account. It is also worth noting that the Bill does not prescribe the process for preparing advice on emissions budgets. This means that the Commission may calculate New Zealand’s cumulative budget if they consider it necessary to aligning the emissions budgets with the 1.5 °C purpose.

The remaining global carbon budget estimated by the IPCC is not for the period to 2050. In the 1.5°C pathways assessed, greater removals (negative emissions) after 2050 compensate for higher cumulative emissions up to that point. In this way, they achieve comparable cumulative emissions until 2100 despite a large range pre-2050. However, all of these scenarios are characterised by net-zero carbon dioxide emissions around 2050, and the proposed 2050 target reflects this. Considering views on New Zealand’s “fair share” of the remaining emissions budget, and the perception of risk associated with relying on

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29 I.e. a range of global scenarios consistent with limiting average temperature rise to 1.5 degrees Celsius above pre-industrial levels.
development of negative emissions technologies, the Commission will provide advice on the interim emissions budgets consistent with limiting warming to 1.5 °C.

**It is likely that emissions budgets will be progressively ambitious**

Section 5T requires emissions budgets to be set with a view to meeting the 2050 target. The expectation is that successive emissions budgets will be increasingly ambitious and will progressively step towards the reductions required by the 2050 target. As a result, this does not need to be explicitly included in the purpose of emissions budgets for this reason.

We also note that the current drafting protects the ability to ensure a just transition, for example by setting emissions budgets that are technically and economically feasible, and that consider the distributional impacts of actions taken to achieve the 2050 target (section 5Z(2)(b)).

**Emissions budgets and NDCs have distinct purposes**

While emissions budgets and NDCs are both essential parts of New Zealand’s approach to addressing climate change, they serve distinct purposes.

Successive emissions budgets will guide New Zealand’s economic transition to the 2050 target. The Bill requires emissions budgets to be met, as far as possible, through domestic reductions and domestic removals. While offshore mitigation can be counted towards emissions budgets, this is intended to be a flexibility mechanism that can only be used in limited circumstances – that is, where unforeseen events affect the ability to meet an emissions budget domestically.

NDCs are an international commitment communicated under the Paris Agreement. Unlike emissions budgets, NDCs must represent a country’s highest possible mitigation ambition (and progression over previous efforts). This contribution can be delivered both domestically and offshore. New Zealand’s NDC for 2021 to 2030 was set recognising that New Zealand may deliver more to the global mitigation effort if it supplements domestic action with offshore mitigation action.

New Zealand communicated its first NDC for the period 2021 to 2030 under the Paris Agreement in 2016. Nothing in the Bill affects the ability to use offshore mitigation to meet this commitment. If New Zealand’s first two emissions budgets were aligned with the first NDC and were met domestically, the economic and distributional impacts would be significant. This would undermine the ability to deliver a just transition, one of the central tenets of the Bill.

**Recommendation**

Proceed with the insertion of new section 5T with amendments to-

- include a reference to the need for New Zealand to contribute to global efforts to limit the average temperature increase to 1.5 °Celsius above pre-industrial levels
- clarify that emissions budgets must be set in a way that allows them to be met domestically, but enables offshore mitigation to be used if unforeseen circumstances affect the ability to do so.

**New Section 5U Duty of Minister to set emissions budgets and ensure they are met**

**Explanation**

New section 5U requires the Minister to set an emissions budget for each emissions budget period, and provides that there must be three emissions budgets in place at any given time (one that is current, and two that are prospective). This section also prescribes the date by which each budget must be set and notified, and imposes an obligation on the Minister to ensure compliance with each emissions budget.
Submissions
The submissions relevant to this provision focussed on three areas:

(1) five-year emissions budgets, set ten years in advance
(2) the timeframes for setting the first three emissions budgets (note: these must be notified by 31 December 2021), and
(3) the intent of the Ministerial duty to ensure that emissions budgets are met.

Five-yearly emissions budgets will be set at least 10 years in advance

The majority of submitters supported the proposal in the Bill (section 5U(2)). Amongst these submitters, there was near-consensus that five-year budgets set 10 years in advance will provide the certainty that businesses need to make investment decisions, and send an important market signal.

Very few submitters opposed the suggested five-year emissions budgets. Those that did cited the following reasons:

- emissions budgets and emissions reduction plans should align with local Government planning processes, and local Government could move to five-year cycles.
- emissions budgets should be set fifty years in advance. This submitter noted that this is a prudent practice for key long-term strategies and for programmes that are time-critical, and would encompass longer considerations (eg, the life cycle of sequestering trees, industrial plant renewal cycles).
- five-yearly emissions budgets may not be flexible enough to changing circumstances. Two or three-year emissions budgets were suggested as an alternative.

The most notable submission against the proposed five-year emissions budgets was from the PCE. They submit that emissions budgets should be six years long, with a mid-term review after three years. They recommend this because:

- In the UK, they also have five-year carbon budgets. UK officials have suggested that the five-year gap between policy reviews is too long, and means that the process ends up starting from scratch each time. They suggest that a requirement for the Government to undertake a review of its policy plan midway through the five-year period would be a useful addition.
- The process of setting emissions budgets should be sheltered from the ebb and flow of politics. In PCE’s view, the best way to gain cross-party support is to require each parliament to formally turn its mind to emissions budgets once during its three-year term.

The Minister has a duty to ensure that emissions budgets are set in accordance with the timeframes stipulated in section 5U(2) and (3).

While no submissions commented on the Minister’s duty to ensure that emissions budgets are set, a small number commented on the timeframes for setting the first three budgets. Most of these submitters suggest that there will be practical challenges if the Commission is required to provide its advice on the first three emissions budgets and policy direction on the first emissions reduction plan by 1 February 2021.

The Interim Climate Change Committee offered the most substantive comments on this section. They expressed concern at only having one year to prepare their advice on emissions budgets and the first emissions reduction plan, which they believe will be challenging despite the preparatory work they are already undertaking. They are also concerned about the 11 months within which the Minister must set
and notify the first three emissions budgets and the first emissions reduction plan (with supporting policies and strategies), which they describe as a “major task”. The Interim Climate Change Committee recommends that to best enable the delivery of high-quality emissions budgets and emissions reduction plan in a short timeframe, the existing dates should be pushed back to allow the Commission to provide its initial advice on 1 June 2021.

A small number of submitters are concerned that the timeframes for delivering the first three emissions budgets do not reflect the urgency of the climate crisis. In the words of one submitter, “given the scale of decarbonisation required to deliver the 2050 target, the absence of a budget – and therefore corresponding policy settings – create a significant gap during which emissions are likely to continue to rise”. This submitter suggests that the first emissions budgets should be gazetted by 31 December 2020 at the latest. Other submissions indicated that the ability to manage and deliver the first emissions budget will be limited, due to the time needed to build up the necessary resources.

The Minister must ensure that emissions budgets are met

Very few submissions commented on the Minister’s duty to ensure that the emissions for that period do not exceed those permitted in the emissions budget (section 5U(4)).

PCE’s comments on subsection 5U(4) were the most substantive. They suggest that New Zealand’s ability to meet an emissions budget will depend on many factors over which the Minister has little control, including forces within the economy. PCE also noted that changes in Government and Ministerial portfolios may affect a Minister’s ability to determine the policy settings needed to meet a budget. As a result, PCE considers it inappropriate for a Minister “to ensure” that an emissions budget is met.

Beef + Lamb stated that it is unclear how the Minister will achieve this absolute requirement and what the outcome would be if New Zealand fails to meet an emissions budget.

NZ Climate Change Litigation Network submitted that the duty in section 5U(4) should be expanded, so that the Minister not only has a duty to ensure that an emissions budget is met, but also to ensure that “any applicable Nationally Determined Contribution” is met.

Analysis

It is appropriate for there to be five-yearly emissions budgets set at least 10 years in advance

In light of the submissions received and further analysis, we recommend that emissions budgets cover successive five-year periods and that three must be in place at any one time. This is for the following reasons:

- It provides greater predictability for businesses and communities while remaining flexible for the future. The Insurance Council suggests that looking more than 15 years ahead would be too much.
- Aligns with the timing of our NDC under the Paris Agreement (eg, making reporting and comparisons between New Zealand’s domestic pathway and international contributions easier).
- Spread across electoral terms to provide greater predictability across political cycles
- Reviewing emissions budgets every three years would undermine the certainty/predictability of the framework and affect the ability of businesses to make investment decisions
- Reviewing emissions budgets every three years would impose another responsibility on the Commission – not a simple task
- Gaining cross-party support to a Bill arguably negates the need for a review at the three-year mark.
The timeframes for delivering the first three emissions budgets and the first emissions reduction plan are tight, but are necessary to implement the Zero Carbon framework as soon as possible. We acknowledge that a significant amount of work will be required for the Commission to advise on the first three emissions budgets and provide high-level policy direction on the first emissions reduction plan by 1 February 2021. We recognise that this will be challenging.

We also acknowledge that it will be a “major task” for the Minister to gain agreement to the first three emissions budgets and notify them by 31 December 2021, particularly if these emissions budgets departed from the Commission’s recommendations and additional consultation was required. It is possible, however.

We also recognise that the production of the first emissions reduction plan for 2022-2025 will require significant effort and considerable coordination across Government departments, together with consultation (including with sector representatives, affected communities, and iwi/Māori).

The quick turnaround for the first three emissions budgets and emissions reduction plan reflects the urgent need to take action on climate change, and for New Zealand to take steps to reduce its gross emissions and removals of domestic GHG emissions. We recognise the concerns of the Interim Climate Change Committee, but note that pushing back the date by which the Commission must provide its advice to 1 June 2021 would delay action until mid-2022. This is too late.

To mitigate the risks involved, the Interim Climate Change Committee is undertaking preparatory work to be provided to the Climate Change Commission once it is established. The Commission’s analysis and advice could also build on the work undertaken on the provisional emissions budget. This is the precursor to the first emissions budget for the purposes of providing the signal needed to establish the settings of the New Zealand Emissions Trading Scheme. It should also be noted that emissions reduction plans are more flexible still, and can be continually updated so that they remain up-to-date and relevant. This also ensures that they can be updated in response to scientific and technological developments.

We note that the Commission will have more time to advise on the first three emissions budgets than did the Committee on Climate Change in the United Kingdom. In the UK, a shadow Committee for Climate Change was established in March 2008, nine months prior to the enactment of the Climate Change Act 2008 and the formal establishment of the Committee. The Committee delivered its recommendations on the first three carbon budgets in December 2008, and were enacted by Parliament in May 2009.

The Minister’s duty to ensure that emissions budgets are met provides clear accountability. New Section 5U(4) is intended to ensure that the Minister not only has a duty to set emissions budgets, but also to put in place the measures (eg, policies and strategies) necessary to achieve an emissions budget. In this way, the clause sought to remedy a problem in the UK, where there were delays in preparing and publishing the policies for meeting the fourth carbon budget.

The duty in section 5U(4) is deliberately vague. It does not specifically mention the need to prepare and publish policies and strategies capable of meeting emissions budgets, because it is also intended to require the Minister (on behalf of the Government) to meet the emissions budget. This attributes greater weight to the emissions budget framework by creating a clear line of accountability.

In the event that New Zealand fails to meet an emissions budget, the Minister is required to table a report in the House that sets out the reasons for this failure. The PCE notes that changes in Government and changes to Ministerial portfolios may affect the Minister’s ability to influence the policies and strategies, and the outcome of a budget period. If this is the case, the Minister may say so. However, this
does not alter the fact that successive Governments need to commit to reducing New Zealand’s emissions and, if anything, the provision strengthens the need to gain cross-party support for emissions budgets.

Emissions budgets will define New Zealand’s domestic transition, and the Bill should not require these to align with NDCs
This matter is addressed in relation to section 5T.

Recommendation
Proceed with the insertion of new section 5U with no change.

New Section 5V Contents of emissions budgets

Explanation
New section 5V describes the required contents of emissions budgets. An emissions budget will state the total emissions permitted over a five-year period as a net quantity of carbon dioxide equivalent. An emissions budget must apply to all GHGs (including biogenic methane).

Submissions
Twenty-four submissions from organisations commented on matters relevant to section 5V. A large number of these submitters were opposed to the proposed approach, in particular:

- Five submitters considered that there should be separate emissions budgets for biogenic methane and all other gases, as this would reflect the form of the target and would make it easier to chart and monitor the course to the overarching 2050 target.
- Five submitters were in favour of sector-specific budgets, noting that this would allow for careful consideration of the climate impacts of each sector, the issues/challenges each sector is facing, and the viable emissions reduction options that are available to them.
- Four submitters expressed concern about the problems with GWP100, which they consider overstates the impact of short-lived GHG emissions.
- Two submitters questioned how the accounting rules would work, particularly given the 2050 target and emissions budgets take different forms.
- One submitter suggested that three emissions budgets are established for each budget period.
- Some submitters suggested that the Bill establishes a separate emissions budget for sequestration.
- Some submitters suggest that a separate emissions budget should be established for biogenic methane emissions resulting from food production, which should be set relative to carbon efficiency and emissions per kilogram of food produced.

Three submitters supported the approach that has been taken in the Bill.

Analysis

A single emissions budget provides valuable flexibility
Section 5V provides that there will be a single emissions budget for each five-year budget period that will cover all GHGs and state the amount of emissions permitted as a quantity of carbon dioxide equivalent.

Having a single, net emissions budget means there is flexibility in how New Zealand achieves each emissions budget, and will help manage New Zealand’s transition to a low-emissions economy. It does this by allowing New Zealand’s GHG emissions to be offset by removals (i.e. from forestry), and for overall
emissions reductions to be rewarded, regardless of where these reductions come from. The UK Committee on Climate Change has stressed the importance of maintaining this flexibility.

_The emissions budget framework will take account of the different target components_

The distinction that the target makes between biogenic methane and all other GHGs is not ignored in the emissions budget framework, however. When preparing its advice on emissions budgets, for instance, the Commission must consider how emissions budgets and the 2050 target could realistically be met. This will require consideration of the reductions required in each GHG, including the gross reductions in biogenic methane required to meet and maintain the biogenic methane component of the target. The Commission will also regularly report on progress towards each component of the 2050 target (eg, for biogenic methane and all other gases).

_There is scope to amend the rules for measuring and reporting GHG emissions in the future_

The Commission is also required to provide the Government with advice on the rules that should apply to measuring progress towards meeting emissions reductions and removals. If it is no longer appropriate to use GWP100 to calculate carbon dioxide equivalence, section 5X(1)(b) provides scope for the Commission to recommend new methods for measuring and reporting GHG emissions.

**Recommendation**

Proceed with the insertion of new section 5V with no change.

**New Section 5W How emissions budgets are to be met**

**Explanation**

New section 5W requires emissions budgets to be met, as far as possible, through domestic emissions reductions and domestic removals.

This section also requires that, when setting an emissions budget, the Commission and the Minister must have particular regard to how the emissions budget and the 2050 target may realistically be met. This specifically requires consideration of –

- the amount by which each GHG must be reduced
- the amount by which GHG emissions must be removed
- the key opportunities for reducing and removing GHG emissions in New Zealand, and the risks and uncertainties involved.

**Submissions**

Submissions on this section primarily focussed on two areas:

- offshore mitigation
- forestry offsets

**Offshore mitigation**

The ability to use offshore mitigation to meet emissions budgets is one of the more contentious aspects of emission budgets.
Overall, the majority of submitters expressed concern at the approach taken under the Bill and requested that the use of offshore mitigation be expressly prohibited. Reasons for this position included:

- allowing the use of offshore mitigation will diminish the incentive to reduce New Zealand’s emissions and negatively impact the value of New Zealand’s carbon units
- allowing the use of offshore mitigation may delay the decarbonisation of New Zealand’s economy, and will cost us in the long-term as carbon prices increase. This may also result in steep and quick emissions cuts closer to 2050
- meeting emissions budgets through domestic abatement will encourage investment in upgrading our economy to reduce emissions, rather than investing in international low-emissions markets
- meeting emissions budgets through domestic abatement will promote long-term certainty and accountability
- focussing on domestic abatement will drive domestic action and innovation in local communities and businesses

A large number requested greater clarity around when offshore mitigation can be used, and criticised the use of the phrase “as far as possible” as vague and unhelpful. Motu suggested that, if emissions budgets are intended to guide our domestic transformation, offshore mitigation should only be used to bridge an unintended compliance shortfall, and should have a quantity limit set on an absolute basis (i.e. not intensity).

Some took an opposite view and considered that there should be greater access to offshore mitigation (including a large percentage of submissions from businesses, industry, and local Government). The following arguments were made by these submitters:

- offshore mitigation is a useful flexibility mechanism, and will help manage the cost of the transition to a low-emissions economy
- other countries will have a competitive advantage if access to offshore mitigation is excluded or limited
- access to offshore mitigation would allow for a smoother, less costly transition in a way that is linked to the costs faced by overseas competitors
- there should be no barrier to using offshore mitigation if the reductions sourced from overseas have environmental integrity.

Some submitters tempered their support by expressing concerns at a possible over-reliance on offshore mitigation, noting that

- there would be risks to New Zealand’s international reputation if there is too strong a focus or reliance on emissions reduction projects in “cooperating” countries
- over-reliance could undermine the achievement of emissions budgets and the 2050 target, and jeopardise a consistent carbon price
- offshore mitigation should be subject to a strict limit, and could be defined in legislation.

A large number of submissions suggested that offshore mitigation should only be used where there is certainty around its environmental integrity.

Forestry offsets
A large number of submissions focussed on section 5W(1), which requires emissions budgets to be met, as far as possible, through domestic emissions reductions and domestic removals.
Overall, the majority were concerned at the lack of restrictions on the amount of forestry removals that can be used to meet emissions budgets and the 2050 target. A large number of submissions either requested clarity around the use of forestry or suggested that a limit or cap be introduced (for example, by setting gross and net emissions budgets for each budget period or setting a separate emissions budget for sequestration). A number of reasons were given to support this position, including:

- Extensive expansion of forestry could lead to New Zealand running out of available land, and adversely impact communities. One submitter commented that this is particularly important in the context of large, industrial emitters, noting that there would be significant impacts for the food and fibre industry, rural communities, small towns and provincial New Zealand as a whole if these emitters can offset their emissions by purchasing land otherwise used for food production and planting pine forests.
- Planting trees should be a complementary measures, rather than a substitute for real emissions reductions.
- Forestry offsets are not a permanent solution, and involve a number of risks (eg, forestry is sensitive to climate change impacts, and vulnerable to fire, storms, pests, and disease).
- Over-relying on forestry offsets will delay gross emissions reductions, and shift the burden to future generations at an increased cost.
- Offsets are useful and important (and will become increasingly so), but this does not detract from the initial importance for rapidly reducing gross emissions.

Suggested caps ranged from 15-30 per cent, with a general preference for a 30 per cent offset cap to be set for each emissions budget. One submitter suggested that any cap needs to be set in a way where benefits continue to come if you maintain healthy forests (eg, so that companies cannot plant trees, walk away, and leave a bankrupted liability).

Some submissions suggested that the Bill should establish a clear hierarchy for how emissions budgets and the 2050 target will be met. More specifically, they considered that gross reductions should be the first priority, with removals coming in second, and offshore mitigation as the final option. Other submissions were similar, suggesting that gross reductions should be prioritised and that offsets (offshore mitigation and forestry) should be a last resort.

One submission also suggested that forestry offsetting should be restricted to the emissions that New Zealand cannot prevent and must emit during the transition to a zero-carbon future (for example, the manufacture of green technology, green initiatives, and the maintenance of the infrastructure required to operate a zero carbon New Zealand).

Some submitters commented that famers should be able to offset their emissions by planting trees.

A large number of submitters also suggested that, where forestry offsets are used, indigenous flora and fauna should be prioritised.

Other
Some submissions requested that the words “as far as possible” and “realistically” are removed from section 5W(1) and 5W(2). These submitters considered that these words could result in arguments, and act as a reason to limit New Zealand’s ambition.
Analysis

Offshore mitigation

We consider that access to offshore mitigation adds important flexibility in unforeseen circumstances, but recommend that the Bill be amended to clarify:

- the domestic focus of emissions budgets
- the limited circumstances in which offshore mitigation can be used to meet emissions budgets.

Many submitters suggested that the Bill prohibits the use of offshore mitigation.

We recognise that removing the ability to use offshore mitigation to meet emissions budgets could have multiple advantages. For instance, it would:

- clarify the distinct purposes of emissions budgets and NDCs
- provide greater certainty about the abatement that needs to be achieved in New Zealand in order to meet emissions budgets and, ultimately, the 2050 target
- facilitate clarity and understanding about the use of offshore mitigation, removing confusion about its use as a last resort towards ZCB emissions budgets, and focusing on its use as:
  - part of an ambitious contribution to the global effort
  - a tool to help moderate the impact that the NDC would have on the New Zealand economy, and ensure that New Zealand achieves a just transition.

However, allowing access to offshore mitigation does provide important flexibility to allow emissions budgets to be met, even where unforeseen circumstances (such as another global financial crisis or a significant change in trade patterns) affect the ability to feasibly do so domestically. This flexibility enables the Government to better manage the effects of the transition, and limit disproportionate impacts on different social sectors.

While the NZIER modelling indicates that allowing the use of offshore mitigation could lessen the overall economic impact of meeting the target, any decision on offshore mitigation would require the Government to consider how to balance short-term costs with long-term abatement and sequestration. As such, we recommend that the use of offshore mitigation is limited to unforeseen circumstances that affect New Zealand’s ability to meet an emissions budget domestically, and that to do so would incur unacceptable costs to the economy.

The ability to use offshore mitigation provides important flexibility, but should be tightly constrained

Offshore mitigation is one of multiple flexibility mechanisms included in the Bill. Others include:

- the ability to revise the 2050 target if certain criteria are met
- the ability to revise emissions budgets if certain criteria are met
- banking and borrowing across adjacent budget periods
- the requirement that the Commission and the Minister must have regard to a number of matters when determining emissions budgets and emissions reduction plans, including distributional impacts and economic feasibility.

Note that this will include the relative costs of available offshore mitigation, and domestic abatement and sequestration. It should also be highlighted that signalling the use of offshore mitigation now risks diluting incentives to transition domestically, and could lead to higher costs and lower co-benefits in the long run.
We consider that access to offshore mitigation adds important flexibility in unforeseen circumstances, but recommend that the Bill is amended to clarify:

- the domestic focus of emissions budgets
- the limited circumstances in which offshore mitigation may be used to meet emissions budgets.

Addressing this issue requires several changes across sections 5T, 5W and 5X. These changes should:

- highlight the role that emissions budgets play in defining the domestic transition
- clarify the purpose of offshore mitigation – namely, that it should only be used where unforeseen events (such as a forest fire or an economic downturn) have adversely affected the ability to meet an emissions budget domestically
- require the Commission and the Minister to consider the purpose of offshore mitigation when determining the cap on offshore mitigation.

We consider that clarifying the instances in which offshore mitigation can be used will go a long way towards addressing submitters’ concerns, and will focus emissions budgets squarely on the domestic transition. This domestic focus will provide greater clarity about the reductions required in New Zealand, and will help to drive innovation and the uptake of low-emissions technologies.

**Clarifying the purpose and use of offshore mitigation in the Bill will help to distinguish between emissions budgets and NDCs**

There is confusion about the role of the emissions budgets established under the Bill and NDCs communicated under the Paris Agreement. This is because both emissions budgets and NDCs may be met through a combination of domestic abatement (emissions reductions and removals) and offshore mitigation, and both are multi-year targets. As discussed in relation to section 5T, however, emissions budgets and NDCs have distinct purposes and should not be conflated.

Restricting the instances in which offshore mitigation may be counted towards emissions budgets, and clearly communicating that emissions budgets are focussed on New Zealand’s transition to low-emissions, will clarify the distinction between emissions budgets and NDCs and their unique purposes.

**Forestry offsets**

There are risks associated with relying on forestry offsets

We recognise that there are risks associated with relying on forestry offsets to meet emissions budgets and the 2050 target. For example:

- relying on forestry offsets may delay real emissions reductions and the decarbonisation of the economy
- relying on forestry offsets may adversely affect the ability to deliver a just transition, because it could shift the burden of mitigation gross emissions to future generations at an increased cost
- forestry is a temporary solution, and is vulnerable to the effects of climate change (eg, forest fires)
- significant land use change (eg, mass afforestation) may limit the land available for other uses (eg, food production, farming, and housing), and adversely affect local communities.

**The Commission and the Minister should specifically consider the implications of land use change (including afforestation) when setting emissions budgets**

We note that the issues are not limited to the risks associated with relying on forestry to offset our emissions, but land use change more broadly. We therefore recommend that, when setting emissions budgets, the Commission and the Minister must have regard to the level of land use change (including
afforestation) that would be necessary to meet emissions budgets and the 2050 target and the impacts this will have on rural communities. This will require the addition of a new matter in section 5Z(2)(b).

*It is currently inappropriate to restrict the amount of forestry offsets that can be used towards meeting emissions budgets*

A significant number of submissions suggested that each emissions budget cap the amount of forestry removals that can be used in each budget period. We do not recommend this approach because it would remove the flexibility that has been built into the emission budget framework, and because there is currently insufficient evidence to recommend a blanket cap on the amount of emissions that can be offset by forestry. A similar view has been taken in respect of the 2050 target (see section 5O).

*The Commission must consider the role of emissions reductions and removals, including key opportunities, risks and challenges, when advising on emissions budgets*

We also note that the Bill requires the Commission to advise on:

- the amount of gross reductions that will be required in each GHG to meet an emissions budget and the 2050 target (section 5W(2)(a))
- the amount of removals that will be required (section 5W(2)(b))
- the key opportunities, risks and challenges that will be associated with increasing New Zealand’s reductions and removals (section 5W(2)(c)).

While this advice is not binding, it will be provided to the Minister, presented in the House of Representatives, and made publicly available. This ensures that the risks and challenges associated with emissions reductions and removals (including, but not limited to, forestry) are identified and are considered by the Government as decisions are made on the level of emissions budgets.

*Other*

Clarifying the purpose of offshore mitigation and the circumstances in which it can be counted towards an emissions budget will address submitters’ concerns around section 5W(1) and the use of the phrase “as far as possible”. These changes will highlight the domestic focus of emissions budgets, and the prioritisation of domestic reductions and domestic removals of GHG emissions.

**Recommendation**

Proceed with the insertion of new section 5W with an amendment to—

- clarify that offshore mitigation can only be used where unforeseen circumstances affect New Zealand’s ability to meet emissions budgets domestically.

### 4.3 New Sections 5X to 5ZF: Role of Commission in setting emissions budgets

The Commission will advise the Government on the emissions budget settings that should apply. The establishment of an independent expert body that provides independent advice on the level of emissions budgets (and the best ways to achieve them) will increase public confidence in the emissions budgets that are ultimately gazetted. This is enhanced by the fact that the Commission’s advice will be tabled in Parliament and made publicly available. The information and analysis that informs emissions budgets will be completely transparent as a result.

The Commission’s advice will include:

- the level at which the emissions budgets should be set
the accounting methodologies that will apply (eg, whether they should align with the accounting methodologies that apply to NDCs set under the Paris Agreement or those used for the New Zealand GHG inventory)

- plausible pathways for meeting these budgets
- an indication of the proportion of the emissions budget that will comprise biogenic methane, all other GHGs, and removals (i.e., from forestry) over the budget period
- a limit on the amount of offshore mitigation that can be purchased, and reasons for the limit
- an indication of whether the 2050 target remains appropriate or should be revised, to be included with its advice on the fourth, fifth and sixth emissions budgets.

The Government will be required to respond to the Commission’s advice. In doing so, the Government will need to assume responsibility and is made accountable for its decisions.

New Section 5X Commission to advise Minister

Explanation

New section 5X requires the Commission to advise the Minister on certain matters relevant to setting emissions budgets, having regard to the matters listed in new section 5Z. The section sets the time limits for the advice to be given to the Minister and requires the advice to be made public and presented to the House of Representatives.

Submissions

Role of the Commission

Submissions were generally in favour of the Commission’s advisory and monitoring role in respect of emissions budgets. A significant minority considered that the Commission should have the final say on emissions budgets, however.

Offshore mitigation – general use and environmental integrity

Subsections 5X(1)(d) and (e) relate to the amount of offshore mitigation that can be used to meet an emissions budget, and provide for a cap (or a limit) to be placed on the offshore mitigation that can be counted towards an emissions budget. The submissions received on this issue are summarised in section 5W above, but were generally opposed to the use of offshore mitigation set out in the Bill.

Additional submissions not summarised above related to the environmental integrity of offshore mitigation. This was raised by a significant number of submitters and, for some, was a caveat on the use of offshore mitigation (i.e. offshore mitigation should only be used where its integrity is assured). The Environment Committee also questioned who will determine what constitutes acceptable offshore mitigation.

Timeframes for setting the first three emissions budgets

These submissions were summarised in relation to section 5U above.

Analysis

Role of the Commission

We note that a small minority of submissions requested the Commission to have a decision-making role in respect of emissions budgets.

Our advice remains that it is appropriate for the democratically elected Government to determine the level of emissions budgets. This provides clear political accountability, and also preserves the independence of Commission.
Currently section 5X sits within subpart 3, which is titled “Role of Commission in setting emissions budgets”). We recommend that this is re-named to reflect the fact that the Commission’s role is advisory only, and avoid possible confusion.

The environmental integrity of offshore mitigation
The Bill provides a detailed description of offshore mitigation in clause 6(1). This provides the parameters for what constitutes an acceptable unit, and is intended to ensure that any offshore mitigation used to meet an emissions budget represents a real emissions reduction and is not double counted.

While the Commission will advise on the limit of offshore mitigation that should be used to meet an emissions budget, it will not decide what is (or is not) an acceptable unit. Ultimately, this is a decision for the Minister

International rules are currently being developed around what environmental integrity means.

Timeframes for setting the first three emissions budgets
This issue is addressed in relation to section 5U above.

Tabling requirements
The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendation
Proceed with the insertion of new section 5X with amendments to—

- rename the title of Subpart 3 to reflect the fact that the Commission’s role is advisory only and it will not set emissions budgets
- require that, when advising on the amount of offshore mitigation that may be used to meet the emissions budget, the Commission must also have regard to the need to set emissions budgets that can be met domestically (proposed amendment to new section 5T) and the circumstances in which offshore mitigation can be used (proposed amendment to new section 5W)
- require that, before recommending an emissions budget, the Commission must publicly notify a proposal, allow adequate time for views to be heard, and consider matters raised in consultation
- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case no later than 20 working days after the report is provided to the Minister.

New Section 5Y Minister’s response to Commission
Explanation
When determining an emissions budget, the Minister must respond to the advice tendered by the Commission under new section 5X. The Minister must present that response to the House of Representatives with a proposed emissions budget for the relevant period, and explain any departures from the Commission’s advice.

Submissions
A number of submitters supported the requirement for the Minister to explain any departures from the Commission’s advice and recommendations, and the transparency that this provision provides. One
submitter noted that this will ensure that the Minister remains publicly accountable in respect of the Commission’s advice.

One submission suggested that section 5Y(2)(b) should be amended, so that the Minister must be convinced that the consultation undertaken by the Commission was meaningful, rather than adequate.

Several submissions believed that section 5Y(2)(c) should be strengthened. Suggestions included:

- only allowing the Minister to depart from the Commission’s advice if there are compelling reasons for doing so or if a narrow set of circumstances apply
- requiring the Minister to justify a departure from the Commission’s advice, rather than explaining the reasons
- including a maximum possible deviation from the recommended budget (this submitter suggested that this would mitigate the impact of short-term political influences on the budget setting process).

Most of these suggestions were aimed at strengthening the role of the Commission, and the weight of its advice and recommendations. As one submitter stated, “by strengthening the Commission’s powers, we can guarantee the emissions budgets will be based solely on the best available science and will be a robust, durable, non-political mechanism for our zero carbon transition”.

**Analysis**

Section 5Y will ensure that there is transparency around any decisions to depart from the Commission’s advice. It does this by requiring the Minister to provide a written response to the Commission’s advice and, inter alia, must consider the adequacy of the Commission’s consultation, determine whether any additional consultation is necessary, and explain the reasons for departing from the Commission’s advice. This report must be tabled in the House and made publicly available.

This provision also makes it clear that the Minister is the decision-maker. Given the wide-ranging impacts that decisions on emissions budgets are likely to have, we consider that it is appropriate for the Minister, a representative of the elected Government, to make these decisions. Not only does this create a clear line of accountability, but also preserve the independence of the Commission.

Section 5Y also places significant importance on the advice and recommendations of the Commission, by requiring the Minister to formally explain any departures and table this explanation in the House.

The requirements for Government responses to advice of the Commission are discussed further in chapter 7.2 of this report. We recommend changes to improve consistency, including requiring the Government’s response to the Commission’s advice on emissions budgets to be published.

**Recommendation**

Proceed with the insertion of new section 5Y with an amendment to—

- require that, before setting an emissions budget, the Minister must be satisfied that adequate consultation has occurred (and if not must notify a proposal, allow adequate time for views to be heard, and consider matters raised in consultation)
- require that the Government’s response to the Commission’s advice is published.
New Section 5Z Matters relevant to advising on, and setting, emissions budgets

Explanation
New section 5Z sets out the matters to which the Commission, in advising the Minister, and the Minister, in determining an emissions budget, must have regard or, in the case of how a budget is to be met, have particular regard.

Submissions
There was little objection to the matters in the Bill. However, a few submitters called for the lists of matters to be harmonised or simplified, to better provide for the Commission to exercise analytical judgement. Many submitters submitted further matters that the Commission should take into account. In general, those who submitted additional matters sought to bolster the Commission’s consideration of one or more of the following:

- the best available information
- New Zealand’s fair share of a global effort
- a fair distribution of costs, benefits and risks within New Zealand
- specific ways of achieving climate outcomes
- the importance of non-climate outcomes

The submissions received on the matters included in section 5Z overlapped significantly with those that must be taken into account by the Commission in the performance of its functions and duties (section 5L) and in relation to its advice on emissions budgets (sections 5X(c) and 5W(2)). These are analysed in more detail in relation to section 5L above.

Analysis
Broadly, we consider that the considerations in the Bill will require the members of the Commission to turn their minds to each of the matters raised by submitters, while leaving it open to them to consider other matters that may also be relevant. Except as noted in other sections, we do not propose to detail these matters with any more specificity. For more detail, please refer to the discussion of section 5L.

Recommendation
Proceed with the insertion of new section 5Z with an amendment to—

- add a requirement for the Commission and the Minister to have regard to the potential implications of land use change for communities.

New Section 5ZA Publication of emissions budgets

Explanation
New section 5ZA specifies that after the Minister has finalised an emissions budget, but before it is notified, the Minister must consult a representative of each political party represented in the House of Representatives, then notify the emissions budget in the Gazette, present it to the House, and publish it on an Internet site directed by the Minister. A Gazette notice published under this section is not a legislative instrument and is not disallowable for the purposes of the Legislation Act 2012.

Submissions
The process for setting emissions budgets
Very few submissions commented on section 5ZA or the process for setting emissions budgets more broadly.
Those who did comment (including six organisations), were in favour of the approach taken in the Bill. These submissions particularly supported:

- the requirement for cross-party consultation on emissions budgets before they are notified
- the fact that the decision-making is left to democratically elected parliamentarians
- the requirement for the Minister to explain any departures from the recommendations of the Commission.

The most substantive comments were received from the PCE, who submitted that emissions budgets should be debated in Parliament. They considered that:

- a resolution could be delivered within whatever timeframe is stipulated in the legislation, citing Standing Order 322 as an example
- the Legislation Guidelines 2018 expressly recognise that delegated legislation should not be used to avoid full debate and the scrutiny of politically contentious matters in Parliament
- emissions budgets will be no more complex than other matters, such as the annual debates on Budget Policy Statements
- the fact that many of the decisions affecting the economy are fundamentally Government decisions does not “evacuate the role of Parliament”.
- a range of delegated legislation is subject to a process akin to affirmative resolutions in New Zealand, also noting that there are also a wide array of confirmable instruments available.

PCE’s view was broadly supported by one submission that suggested that emissions budgets should be mandated as legislative and disallowable instruments. In their view, this would better align with the UK approach, and would provide additional Parliamentary oversight over the setting of emission budgets.

**Whether emissions budgets should be mandated as disallowable instruments**

Only three submissions commented on section 5Z(3), which states that a Gazetted emissions budget will be neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012.

The Regulations Review Committee questioned whether emissions budgets should be disallowable instruments, particularly given the Commission’s reliance on the New Zealand GHG Inventory data, given that the Regulations Review Committee could not identify a statutory basis for the Inventory.

Two other submissions commented on the fact that emissions budgets are neither legislative nor disallowable instruments under the Bill. One noted that this means that emissions budgets cannot be disallowed after being presented to Parliament, while the other suggested that, while not a legislative or disallowable instrument, emissions budgets should be presented to the House of Representatives under section 41 of the Legislation Act 2012.

**Analysis**

**Process for setting emissions budgets**

**An affirmative resolution process would be time consuming**

We consider that an affirmative resolution procedure is not the best way to set and notify emissions budgets, and would involve significant timing risks. In particular, we note that:

- In order for Parliament to agree an emissions budget in less than six months, it would need to be treated with utmost urgency. In practice, this could require a Government to gain political support from any coalition parties in advance (eg, when forming a Government)
• An affirmative resolution process may be particularly challenging in respect of the first three emissions budgets, which must be set and notified by 31 December 2021.

The Bill could not require the House to affirm an emissions budget within a certain timeframe
The Bill could not require the House to affirm an emissions budget by any particular time. Instead, it could only provide that a proposed emissions budget will lapse if not passed within a specified timeframe.

In this case, the Minister would have to amend and re-introduce the budget until it could achieve the support of the House. Support for emissions budgets could therefore become a foundational requirement for forming a Government, akin to confidence and supply.

Depending on the timeframes by which an emissions budget could lapse, this process could also introduce uncertainty into a framework designed to provide clear and stable climate change policies, and stimulate predictability for households, businesses, and investors.

The Bill provides opportunities for cross-party consultation and Parliamentary debate on emissions budgets
The Bill provides for the Minister’s political accountability to the House and the electorate through the opportunity for cross party discussion and debate in the House:

• Representatives of each political party in Parliament must be consulted before emissions budgets are finalised.
• The Bill requires all of the Commission’s reports (including its advice on emissions budgets and monitoring reports) to be tabled in the House of Representatives, together with the Minister’s written responses and notified emissions budgets. These requirements allow the contents of these reports to be debated accordingly.

Emissions budgets are highly complex
Setting emissions budgets is primarily a Government decision, requiring planning for significant policy trade-offs that will have multiple policy impacts

It should also be noted that the emissions reduction plan will include policies and strategies designed to achieve New Zealand’s emissions budgets and, ultimately, the 2050 target. These may take the form of regulations, which would be subject to Parliamentary oversight.

The process for setting emissions budgets differs from the approach in the United Kingdom
The process set out in the Bill represents a departure from those that apply under the Climate Change Act 2008 (UK). The UK legislation requires carbon budgets to be debated in Parliament and subject to an affirmative resolution procedure. This means that carbon budgets must be actively approved by both Houses of Parliament.

31 Note: Parliamentary procedure is governed by the Standing Orders, not by legislation.
32 There are examples in the Misuse of Drugs Act (s4A) and Dog Control Act (s78B) of Orders in Council not having effect until approved by a resolution of the House. However those impose no timeframe on the House per se. They only say that the House can consider at any time after 28 days from Gazetted, and the OIC lapses if no resolution is made within 1 year.
Emissions budgets should not be disallowable instruments

Disallowable instruments are delegated legislation (such as regulations) that can be disallowed by resolution of the House. In practice, disallowable instruments are examined by the Regulations Review Committee, who may bring them to the attention of the House.33

An instrument is disallowable for the purposes of the Legislation Act if it is a legislative instrument,34 if an Act makes it a disallowable instrument, or if the instrument has a significant legislative effect.

Emissions budgets are not legislative instruments, and do not have a significant legislative effect. The Bill’s duties to set and meet emissions budgets hold Ministers accountable to Parliament. They do not delegate to Ministers a law-making function, because emissions budgets do not affect the rights or obligations of the public in and of themselves.

The letter from the Regulations Review Committee suggests that it might nevertheless be useful for the House to be able to disallow an emissions budget as a way of managing uncertainty, since compliance with the emissions budget depends on information (eg, about the way sectors are reported in the Inventory) which could change.

Our advice is that provisions to revise an emissions budget in response to a change in methodology will more appropriately manage that uncertainty. The Commission will also have the technical expertise to advise on reporting methods, and it will be a function of the Commission to advise on the rules that will apply to measure progress towards meeting emissions budgets and the 2050 target (new section 5X(1)(b)).

Having considered the Regulation Review Committee’s concerns, we consider that it remains appropriate that emissions budgets are not mandated as disallowable instruments. The LDAC and the Parliamentary Counsel Office agree with this position.

Section 41 of the Legislation Act 2012

Section 41 of the Legislation Act 2012 only applies to legislative and/or disallowable instruments. Amending the Bill to include a requirement that notified emissions budgets are presented to the House of Representatives under this section would not be appropriate. We note that the Bill already provides for a copy of a notified emissions budget must be presented in the House (section 5X(5)).

Recommendation

Proceed with the insertion of new section 5ZA with no change.

New Section 5ZB When emissions budgets may be revised

Explanation

New section 5ZB makes provision for the revision of emissions budgets.

Submissions

Most submissions supported section 5ZB and the limited circumstances in which emissions budgets can be revised. One submission was particularly strong in its support, noting that the ability to revise emissions budgets would provide sufficient flexibility for New Zealand to set an emissions reduction trajectory that is mindful of national and international circumstances, and can respond to changes in

33 See Standing Orders 318-319.

34 A term that includes most Orders in Council, any regulations that amend an Act, and certain other kinds of instrument specified in the Legislation Act 2012
economic conditions and the cost of technologies without losing sight of the overall long-term goal. In their view, this approach is more likely to “drive investment into the cost-effective emissions reductions while allowing for a flexible approach to managing economic impacts and changed market conditions”.

However, some submissions suggested strengthening this provision, so that the ambition of emissions budgets can be increased but not decreased. One submitter noted that this would guard against future Governments relaxing emissions budgets.

A small number were opposed to the ability to revise emissions budgets. These submissions considered that allowing emissions budgets to be revised would provide an opportunity to reduce the commitment to decrease New Zealand’s GHG emissions. One submission also suggested that there should be greater focus on the consequences of not meeting emissions budgets, rather than the ability to revise emissions budgets.

One submission noted that the framework allows emissions budgets to be amended until the point that they become operative. In their view, this could create considerable uncertainty and would not give businesses time to adapt, particularly if the ambition of the emissions budget is increased.

Other submissions suggested that new section 5ZB is amended, for example to:

- explicitly allow emissions budgets to be revised in light of any changes to the 2050 target
- only allow a current emissions budget to be revised if there are “significant and material reasons to do so”. This would modify the “exceptional circumstances” threshold currently in the Bill, noting that a small number of submissions asked for “exceptional circumstances” to be clearly defined
- allow emissions budgets to be revised in light of the impact of international emissions on actions taken to achieve the 2050 target.

One submission argued that the Commission should determine whether emissions budgets should be revised, not the Minister, and a small number of submissions suggested that the Minister should have greater discretion to revise emissions budgets.

Analysis

**Emissions budgets may only be revised in limited circumstances**

Section 5ZB allows emissions budgets that have already been set and notified in the New Zealand Gazette to be amended in limited circumstances\(^\text{35}\) and that the Minister must explain the reasons for revising emissions budgets in a report that is tabled in the House of Representatives.

These requirements set a high bar, and will guard against emissions budgets being revised without good cause. As a result, section 5ZB strikes the correct balance between the policy predictability needed to stimulate investment and innovation in low-emissions technology and the flexibility to adapt to changing circumstances. This will help to manage the impacts of the transition to 2050 and ensure that it is as just and as fair as possible.

**Emissions budgets may be revised in light of changes to the 2050 target**

One submission suggests that section 5ZB be amended to explicitly allow emissions budgets to be revised in light of any changes to the 2050 target.

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\(^{35}\) I.e. if there have been significant changes to the considerations that formed the basis of the emissions budget or, in the event of the current emissions budget, in exceptional circumstances
Section 5T(a) requires emissions budgets to be set with a view to meeting the 2050 target, and may then be amended if certain criteria are met. This includes where there have been significant changes that have affected the matters taken into account when the emissions budget was originally set, including those in 5W(2) and 5Z. Section 5W(2) explicitly requires consideration of how emissions budgets and the 2050 target may realistically be met.

As a result, the Bill already allows emissions budgets to be revised in light of changes to the 2050 target. We recommend that this does not need to be explicitly provided for in section 5ZB.

**Whether an emissions budget should be revised is a Government decision**

The Bill allows the Commission to review existing emissions budgets when they are providing advice on a future emissions budget. The Commission must provide this advice to the Minister, following which the Minister must take it into account and progress the revised emissions budget through the legislated process for setting an emissions budget (see section 5ZA). The Minister must also table an explanation of the reasons for revising an emissions budget in the House.

We consider that it is appropriate for the Minister, a representative of the democratically elected Government, to decide whether to revise an emissions budget. This preserves the independence of the Commission and provides a clear line of accountability.

**Tabling requirements**

The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

**Recommendation**

Proceed with the insertion of new section 5ZB with amendments to—

- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

**New Section 5ZC Power to bank or borrow**

**Explanation**

New section 5ZC sets out the details of when an excess reduction of emissions may be carried forward (banking) or, if an emissions budget has not been met, how that deficit may be carried back against a previous budget (borrowing). Banking or borrowing is at the discretion of the Minister after receiving advice from the Commission.

**Submissions**

There was no consensus across submissions received on banking and borrowing.

Some supported the ability to bank or borrow between adjacent budget periods, noting that it provides flexibility in how New Zealand can achieve its emissions budgets without endangering the purpose of the Bill. The UK Committee on Climate Change, in particular, submitted that the provisions improve upon the UK’s position by setting a deadline by which a decision on banking or borrowing must be made.
Some caveated their support, suggesting that:

- the one per cent cap on borrowing is arbitrary, and may not be appropriate given the variability of the forestry sector
- the ability to bank or borrow should not be available immediately after an emissions budget has been revised
- the Bill should place a limit on the amount that can be banked towards the next emissions budget (e.g., to ensure that it is clear how other emissions budgets would be affected, to ensure that New Zealand stays on the optimal emissions reduction pathway to 2050, and makes consistent progress towards our emissions reduction goals)
- greater restrictions should be introduced (e.g., the Bill should prohibit the ability to borrow across two consecutive emissions budgets to prevent it from weakening the setting of future emissions budgets or introducing other controls that ensure that the system remains in credit and aims to reduce emissions faster than the stepping stones pathway)
- the Bill should clarify the implications of banking or borrowing for the next emissions budget (e.g., banking would make the next emissions budget easier to meet, while borrowing would make it harder) and should prescribe the process in greater detail
- the cap on borrowing is restrictive and should be increased, with one submitter suggesting that the Bill should explicitly allow borrowing of up to 15 per cent and allow more if needed.

Other submitters supported banking, but not borrowing. One submitter believed that borrowing from a future emissions budget would impair the credibility and effectiveness of the Bill and the NZ ETS, and risk the environmental integrity of the target and subsequent emissions budgets. This submitter was concerned that including a cap in the legislation creates a risk that this will be increased in the future, and preferred the ability to purchase offshore mitigation to borrowing.

Others submitter supported borrowing, but were opposed to banking. One submitter suggested that banking is harmful, and would disrupt the optimal pathway for achieving emissions reductions and makes sustained cuts more difficult to achieve.

Other submitters were opposed to both banking and borrowing. Reasons for this position included:

- concern about the additional flexibility that banking and borrowing would provide
- fear that these mechanisms would encourage complacency, and undermine the strength and purpose of emissions budgets
- banking and borrowing weaken the powers of the Commission, as it is the Minister who decides whether this will occur
- banking and borrowing creates a risk that Governments will delay action and defer responsibility to a future Government in order to avoid unpopular decision-making.

**Analysis**

**Banking**

**The effect of banking**

Banking describes the ability to count excess emissions reductions achieved during one budget period towards the emissions reductions required for the next. In effect, this would make the next emissions budget easier to meet. The Bill allows for unlimited banking across immediately adjacent budget periods.

We recommend that section 5ZC(1) is amended to clarify the implications of banking and borrowing.
The purpose of banking

Some submissions suggested that the Bill introduces a limit on the amount that can be banked towards the next emissions budget, or the ability to bank is removed from the Bill altogether.

Allowing banking across adjacent budget periods provides an incentive for over-performing in a budget period (i.e. achieving more emissions reductions than those required by the emissions budget), as additional reductions can count against the next emissions budget, making it easier to meet. As a result, banking may stimulate earlier innovation and up-take of new technologies.

Borrowing

Purpose of borrowing

Borrowing is the opposite of banking, and will be used if the total GHG emissions for the budget period exceed those permitted in the emissions budget. In this case, up to 1% of the emissions permitted in the immediately adjacent budget period can be brought forward to meet the shortfall. This will make the next budget period harder to meet, as additional reductions will be required.

Like banking, there is no obligation to borrow from the next emissions budget if New Zealand fails to meet an emissions budget. This decision is one for the Minister to make following the end of the budget period.

We recommend that section 5ZC(1) is amended to clarify the implications of banking and borrowing.

Rationale for the 1% cap on borrowing

Limiting borrowing to 1% renders it an administrative “washing up” or “true-up” mechanism that provides the ability to absorb short-run shocks, such as volatility in emissions (e.g. increased emissions in the energy sector due to a dry winter), or accounting errors or adjustments.

This approach also prevents the Government from relying on borrowing as a way of meeting emissions budgets, and mitigates a number of risks, namely:

- potential costs associated with decreasing predictability around the level of reductions required in a given budget period, reducing the certainty provided by the framework and
- the ability of the Government to meet emissions budgets in the medium-long term and, in particular, the risk of deviating from the pathway necessary to achieve the overarching target. This also risks the delivery of a just transition.

A failure to meet an emissions budget would mean that the next emissions budget is more difficult to meet, due to the fact that emissions need to reduce by a greater amount to get back to the optimal pathway to the 2050 target.

Is a 1% cap appropriate in a New Zealand context?

Several submitters questioned whether 1% is an appropriate level of the cap on borrowing, citing forestry as a source of variability. One submitter also noted that the UK Climate Change Act 2008 also caps borrowing at 1%, and questioned whether the 1% cap has been arbitrarily imported into the Bill.

In arriving at the 1% cap, we looked at the level of inter-annual variability in emissions around the longer-term trend. A simple analysis indicated that New Zealand’s historical gross emissions exhibit less inter-annual variability than the UK’s.

We further note that a 1% cap on borrowing is appropriate in a New Zealand context if we use the same accounting methodologies used in respect of NDCs. This is due to the emissions accounting methodologies that it takes to forestry, the harvesting of which is the greatest source of inter-annual variability.
variability in New Zealand’s emissions. Under section 5X(1)(b), the Commission will advise on the accounting rules that will apply in conjunction with their advice on emissions budgets.

Should the cap on borrowing be increased?
Some submissions suggested that 1 per cent cap on borrowing is restrictive, with one submitter suggesting that it should be increased to 15%. Increasing the cap in this way would change the intent of borrowing in the Bill. As noted above, borrowing is currently a “true-up” or accounting mechanism that provides very limited flexibility.36

We do not recommend increasing the cap to 15% because it would:

- reduce the impetus to achieve real emissions reductions in New Zealand, because of the significant wriggle room available.
- significantly reduce the predictability needed to stimulate investment and actions that step towards meaningful reductions in New Zealand’s emissions
- risks allowing a Government to significantly exceed an emissions budget, making subsequent emissions budgets much harder to achieve and departing from the path recommended by the Commission.

The Minister will determine the amount of banking or borrowing that will occur (if any)
The Bill provides that the Minister will make a final decision on the amount of banking or borrowing that should occur at the end of a budget period.

A small number of submissions suggested that the provisions around banking and borrowing weaken the power of the Commission. While the Commission does not have decision-making powers, it will be required to provide advice on the level of banking or borrowing that should occur (if any). The Minister must have regard to this advice when making their determination. We consider that it is appropriate for this decision to be made by elected Government officials, and note that the Commission’s advice and the Minister’s response will both be tabled in the House and made publicly available.

We consider that these requirements provide an appropriate check on the ability to bank or borrow and the impacts that they may have. They also ensure there is transparency around the decision-making process.

Recommendation
Proceed with the insertion of new section 5ZC with amendments to—

- clarify the impact that banking will have on the subsequent emissions budget by providing that the amount of the emissions budget for the next emissions budget period will be increased by the amount carried forward, making the next emissions budget easier to meet
- clarify the impact that borrowing will have on the subsequent emissions budget by providing that borrowing will decrease the amount of emissions permitted in the subsequent emissions budget by up to 1%, making it more difficult to meet.

New Section 5ZD Requirement for emissions reduction plan

Explanation
New section 5ZD requires the Minister to prepare and publish a plan with policies and strategies for meeting emissions budgets.

36 Banking and borrowing are part of a wider suite of flexibility mechanisms, which includes the ability to use offshore mitigation and revise emissions budgets.
Submissions

**Most submitters support emissions reduction plans**

The majority of submissions support the development of an emissions reduction plan, and the consultation requirements. Business Central and the Wellington Chamber of Commerce support the process for setting emissions reduction plans, noting that it balances the need for expert advice with the political accountability of it being in the Minister’s name.

A number of local Government submissions particularly support the requirement for the emissions reduction plan to include a strategy to mitigate the impacts that reducing emissions and increasing removals will have on workers, regions, iwi/Māori, and wider communities, including the funding for any mitigation action. They considered that this will be particularly important for rural communities that are geared towards primary production, and may face significant challenges as New Zealand moves towards the 2050 target.

The sector-specific policies are also supported. The New Zealand Pork Industry Board, for example, stated that sector-specific policies will be critical to their understanding of expected actions within each sector and any necessary investment in research or technologies as part of the plan, and the contribution of each sector.

The multi-sector strategy was explicitly supported by a small number of submissions. For example, the Forest Owners Association and New Zealand Farm Forestry Association noted that this strategy could include the long haul-aviation industry and tourism, and improve how those sectors adapt to the effects of climate change and increase their contribution to net emissions reductions.

One submitter suggested that the emissions reduction plan should be split in two, containing policies and strategies that directly relate to biogenic methane and others that concern all other GHGs.

**Additional considerations when preparing the emissions reduction plan**

A number of submitters suggested additional considerations that should be borne in mind when the emissions reduction plan is being prepared. These include:

- the need for a just transition, and the need for an understanding of the impacts on workers, regions, iwi and Māori
- how the costs of mitigation and adaptation will be funded and financed, and a clear process for how this assistance can be obtained
- the cumulative pressures facing the rural sector
- Te Tiriti o Waitangi and te ao Māori
- health, well-being and equity
- human rights and gender equality
- the competitiveness of New Zealand businesses and mitigating the risks of carbon leakage
- alignment with regional plans prepared under the RMA, long-term plans prepared under the Local Government Act 2002 (LGA), regional land transport plans.

**Adequacy of emissions reduction plans**

Some submitters requested that the Bill is amended to require emissions reduction plans to be “capable” of meeting the emissions budget to which it relates.

**The role of local Government**

A large number of local Governments asked for the role of local Government in preparing and implementing emissions reduction plans to be clarified. Several submitters commented on the fact that
local Government will be critical to ensure the effective implementation of the framework. Some of these submissions asked for a partnership approach to the plan’s development.

Some also suggested that the Bill should clarify the relationship between local Government plans, policies and/or strategies can be aligned with emissions reduction plans.

The role of iwi and Māori
Some submissions suggested that the emissions reduction plan should be co-designed with iwi and Māori, rather than consulting with them after the fact.

Analysis
General comments
The emissions reduction plan was widely supported by submitters. No changes to this section are required.

Additional considerations
We consider that the matters raised are adequately addressed in the matters listed in sections 5Z(2)(b) and 5ZL.

Adequacy of emissions reduction plans
New section 5U(4) requires the Minister to ensure that the net budget emissions do not exceed the emissions budget for the relevant emissions budget period. This is designed to ensure that the Minister puts in place the policies and strategies needed to meet an emissions budget.

The role of local Government
The emissions reduction plan has not yet been developed, nor has any guidance been developed for how stakeholders, including local Government, may take the emissions reduction plan into account. We suggest that this interaction will be clarified as the emissions reduction plan takes shape.

Under the Bill, the Commission is subject to broad consultation requirements. We propose that the process should not be overly prescriptive and should not provide an exhaustive list of groups that it must consult with. This will give the Commission greater autonomy over its processes and allow it to focus on the groups that it considers the most appropriate. We also note that additional protection is provided by section 5ZF(1)(b), under which the Minister must assess the adequacy of the consultation undertaken by the Commission and, if necessary, consult further.

Role of iwi and Māori
As noted above, an emissions reduction plan must include a strategy to mitigate the impacts that reducing emissions and increasing removals will have on workers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action. This is coupled with the requirement for the Commission to consult broadly in preparing its advice, and for the Minister to ensure that consultation with iwi and Māori has been adequate. We consider that this addresses the submitters concerns.

Recommendation
Proceed with the insertion of new section 5ZD with no change.

New Section 5ZE Commission to advise on emissions reduction plans
Explanation
New section 5ZE requires the Commission to advise the Minister, before an emissions budget period begins, on the policies required for meeting the relevant emissions budget. The Commission is required to
consult widely in preparing that advice, and the advice must be made public. The Minister’s written response to the advice of the Commission must be presented to the House of Representatives.

**Submissions**

*Role of the Commission*

Very few submissions commented specifically on the role of the Commission in relation to emissions reduction plans. However, one submitter suggested that to be effective in driving long-term transformation, each emissions reduction plan should address policy pathways for meeting the 2050 target, as well as each emissions budget. For manageability, the Commission’s advice on emissions reduction plans should be focussed on high-level policy direction.

*Consultation requirements*

The majority of submissions support the consultation required in relation to emissions reduction plans, and the need for this consultation to be adequate. Submissions were generally pleased with the requirements to consult with iwi/Māori, affected communities and sector representatives, but some requested that local Government, industry players, low-income earners and those with disabilities should be specifically mentioned in section 5ZF(2)(b).

New Zealand Pork indicate that they have undertaken a significant body of research on GHG emissions and mitigation options for the New Zealand pork industry. They suggest that other industry bodies have been doing the same, and would be well-placed to provide the Commission with quality data to inform emissions reduction plans (or advice where more research is needed). Where possible, the Commission should also utilise strategies already in place where these are adequate to meet proposed emissions reduction targets.

**Analysis**

*Role of the Commission*

We agree that the Commission should only provide high-level advice on emissions reduction plans. This is adequately reflected in section 5ZE(1), which states that the Commission must provide “advice on the direction of the policy required in the emissions reduction plan”. This is also reflected in section 5W(2)(c), where the Commission is required to advise on the key opportunities, risks and challenges associated with increasing reductions and removals of New Zealand’s GHG emissions.

*Consultation*

We recognise that a number of organisations may already have strategies in place for reducing their GHG emissions, and may have already conducted significant amounts of research. An exchange of information will be a critical part of the Commission’s engagement and consultation while preparing their advice on emissions reduction plans, but we do not consider it appropriate to prescribe that level of detail in the Bill.

Requirements for the Commission’s engagement and consultation more generally are discussed in chapter 3.2 of this report. We recommend that the Commission’s consultation requirements in this section are replaced by general requirements at new section 5M.

*Need for clear timeframes*

As discussed in relation to section 5ZE, we acknowledge the concern that the timeframes for preparing emissions reduction plans are not clearer in the Bill, and consider there are benefits in clearly identifying (a) when the Commission would need to provide policy direction and (b) the Minister must publish an emissions reduction plan.
Emissions reduction plans should be set in advance of a budget period

Preparing and publishing an emissions reduction plan before a budget period commences would provide a greater forward view, and would give businesses, investors, and individuals more certainty about the policy measures that will be put in place. This would allow time for the investments to be planned.

We note that the Bill requires the Commission to provide high-level advice on the key opportunities to achieve the reductions and removals required to meet an emissions budget 11 years in advance of a budget period (section 5W(2)(c)). This will signal the policy direction of emissions reduction plans well in advance of a budget period, and provide businesses, investors and individuals with the medium-long term view they seek.

However, we also recognise the need to publish the emissions reduction plan in advance of a budget period, so that there is time for the policies and strategies to be put in place. We therefore recommend that emissions reduction plans are published at least 12 months ahead of an emissions budget period commencing (see discussion in section 5ZF).

Publishing emissions reduction plans 12 months in advance will have implications for the Commission, and will mean that it must provide its policy direction on the emissions reduction plan 24 months in advance of a budget period beginning.

The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendation

Proceed with the insertion of new section 5ZE with amendments to—

- require the Commission to provide its advice on the high-level direction of policy 24 months before the beginning of the period
- remove requirements for consultation by the Commission (in subsection (3)(a))
- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

New Section 5ZF Minister to prepare and publish emissions reduction plan

Explanation

New section 5ZF provides for the Minister to finalise and publish an emissions reduction plan for an emissions budget period.

Submissions

The role of the Minister

Very few submissions commented on the role of the Minister in relation to emissions reduction plans. One submitter strongly supported section 5ZF, however. They noted that in-depth policy development requires political decisions with economic, fiscal, distributional implications and both departmental and public consultation. As a result, it is appropriate that these decisions are the domain of central Government. This submitter also suggested that the Minister should be explicitly required to not only prepare and publish emissions reduction plans, but also implement them.
**Need for clear timeframes**

Most submissions commented on the lack of clear timeframes for the preparation and publication of the emissions reduction plan, and requested that these be more clearly stated in the Bill.

**Emissions reduction plans should be set in advance of the budget period**

Most submissions also asked for emissions reduction plans to be published in advance of a budget period commencing. These submissions generally noted that early planning would enhance the policy certainty for investment decisions and consequently enhance the ability to meet emissions budgets. A number of submissions also noted that businesses work to annual cycles of planning and budgeting, and long-term cycles for large-scale capital investments. They highlighted the need for businesses to know the content of emissions reduction plans early so they can align their investments, actions, and emissions reduction strategies to ensure they play their part.

Most submitters requested emissions reduction plans to be published 5-8 years in advance of a budget period commencing. The UK Committee on Climate Change, however, considered that to ensure that there is time for policies to be actioned, the publication of the emissions reduction plan should be brought forward (i.e. to within 6-12 months of setting an emissions budget).

A large number of submissions also suggested that emissions reduction plans should look beyond the next emissions budget. For example, PCE noted that, in order to be effective, emissions reduction plans will need to have a long-term focus and set policies and strategies with a view to meeting all of the present and prospective emissions budgets. This is a key reason for those who advocated that emissions budgets should be set 5-8 years in advance.

**Consultation**

Most submitters strongly supported the requirements for the Commission to consult before preparing its policy direction on the emissions reduction plan, and for the Commission to ensure that there has been adequate consultation with sector representatives, affected communities, and iwi and Māori. However, a small number of submissions requested that local Government and industry players are also explicitly included.

**Analysis**

**Need for clear timeframes**

We acknowledge the concern that the timeframes for preparing emissions reduction plans are not clearer in the Bill, and consider there are benefits in clearly identifying when the Minister must publish an emissions reduction plan.

**Emissions reduction plans should be set in advance of a budget period**

Preparing and publishing an emissions reduction plan before a budget period commences would provide a greater forward view, and would give businesses, investors, and individuals more certainty about the policy measures that will be put in place and allow to plan ahead.

We recommend that amending the Bill to require the Minister to publish the emissions reduction plan 12 months before the budget period commences. This approach recognises:

- the need for businesses, investors, Government agencies and households to have a forward view of the policies and strategies that will come into play, and plan accordingly
- the evolutionary nature of emissions reduction plans – i.e. an emissions reduction plan is likely to build on the policies and strategies developed to support the achievement of the previous emissions budget
the need to be responsive to changing circumstances, including technological and scientific advancements

- the need for Governments to turn their mind to either emissions budgets or the policies and strategies for achieving emissions budgets at least once during their Parliamentary term.

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We also consider that this is preferable to publishing an emissions reduction plan 5-8 years ahead of a budget period commencing for the following reasons:

- Publishing policies and strategies 5-8 years in advance risks the creation of a policy gap, as significant technological advancements could be made in the intervening period. This could mean that an emissions reduction plan is out of date by the time the budget period commences.

- Setting emissions reduction plans 5-8 years in advance could bind future Governments to decisions made by a previous Government.

Consultation
As discussed in relation to section 5ZD, we recommend that the Minister must consider whether iwi and Māori have been adequately engaged during the preparation of the emissions reduction plan.

Tabling requirements
The requirements for Government responses to advice of the Commission are discussed further in chapter 7.2 of this report. We recommend changes to improve consistency, including requiring a copy of an emissions reduction plan to be presented to the House of Representatives.

Recommendation
Proceed with the insertion of new section 5ZF with amendments to—

- require the responsible Minister to publish emissions reduction plans 12 months ahead of the beginning of the relevant emissions budget period

- require that a copy of each emissions reduction plan is presented to the House of Representatives.

4.4 New Sections 5ZG to 5ZI: Monitoring
The Commission will have an ongoing monitoring role in relation to emissions budgets. Its reports will be publicly available and will ensure that New Zealanders remain informed about our progress towards emissions budgets and, ultimately, our 2050 target. The independence of the Commission will augment the credibility of these reports and keep successive Governments accountable.
New Section 5ZG Commission to monitor progress towards meeting emissions budgets

Explanation
New section 5ZG requires the Commission to monitor New Zealand’s progress towards meeting its emissions budget and the 2050 target. The Commission must carry out this function in line with the rules for measuring and reporting emissions determined under new section 5X(1)(b).

Submissions
Most submissions support the advisory and monitoring functions of the Commission. Submitters generally consider that the Commission’s monitoring role will ensure that the Government can be held to account for its progress towards emissions budgets and the overarching 2050 target, and that the independence of the Commission will ensure that there will be honest accounting and reporting.

Some submitters explicitly supported a monitoring framework that captures the performance of the business sector, including corporations, the farming, and transport sectors, and assesses the adequacy of real-world progress towards New Zealand’s emissions reduction goals.

The Parliamentary Commissioner for the Environment expressed concern that the monitoring and reporting functions of the Commission will result in an endless cycle of reporting that will divert resources away from the Commission’s two key functions: setting emissions budgets and preparing regular NCCRA’s. The PCE requested the Environment Committee to consider whether the detailed reporting in sections 5ZH to 5ZI is necessary.

Analysis
We consider that it is critical for New Zealand’s progress towards its emissions budgets and the overarching 2050 target to be monitored and reported on a regular basis. The expertise and the independence of the Commission makes it the most appropriate body to carry out these functions. Most submitters also supported this function.

In order to fulfil all of its functions – advisory and monitoring – the Commission will need to be appropriately resourced.

Recommendations
Proceed with the insertion of new section 5ZG with no change.

New Section 5ZH Commission to report annually on results of monitoring

Explanation
New section 5ZH requires the Commission to produce annual monitoring reports that assess progress towards emissions budgets and the 2050 target. This report will be based on the data from the New Zealand GHG Inventory, and must include:

- New Zealand’s measured emissions and removals
- the latest projections for current and future emissions and removals
- an assessment of the adequacy of the emissions reduction plan, its implementation, and any new opportunities for reducing emissions.

The Minister must provide a written response to each annual monitoring report, which will also be tabled in the House of Representatives and made publicly available.
Submissions

Commission’s monitoring reports
One submitter suggested that the Commission’s progress reports should specifically assess New Zealand’s progress towards both elements of the target – the biogenic methane component and the net zero component for all other gases.

Timing of the Commission’s annual progress reports
The UK Committee on Climate Change submitted that the turnaround for the Commission’s annual reports is very tight. They noted that the UK Climate Change Act 2008 gives the Committee three months to produce its report after the final emissions data is released. They also questioned the two month turnaround for the Minister’s response, suggesting that this may not be enough time to make policy changes.

Minister’s response
A very small number of submissions were received on the Minister’s responses to the Commission’s monitoring reports. Each made distinct points.

One submission stated that if an emissions budget is not expected to be met, it is imperative that the Government provide a detailed report that explains why an emissions budget is not likely to be met, provides a detailed account as to the balance of responsibility, and outlines the steps that will be taken to remedy the expected shortfall.

Another submitter suggests that the requirement for the Minister to note any amendments to the plan (section 5ZH) is inadequate. In their view, there should be a clear and positive obligation to update the plan annually to ensure that it remains up-to-date and aligned with meeting the emissions reduction target.

One submitter suggested that the Commission’s report and the Minister’s response will be housed in a single report, and noted that this calls the Commission’s independence into question.

Analysis

Timing of the Commission’s annual progress reports and the Minister’s response
We note the concern of the UK Committee on Climate Change, and recognise that the two month turnaround for the Commission’s annual progress reports is tight. We recommend extending this to three months.

We note the concern of the UK Committee on Climate Change, and recognise that more time is needed for the Minister to respond to the Commission’s annual monitoring reports. We recommend extending this to three months, but note that emissions reduction plans may be continually updated. The Minister’s response can therefore signal policy changes before they are implemented.

The Minister’s response to annual progress reports
Under section 5ZH, the Minister’s response to each annual progress report must:

- set out the Minister’s response to the Commission’s report and recommendations
- describe the progress made in implementing the current emissions reduction plan
- note any amendments to the emissions reduction plan.

As indicated above, we believe that it is appropriate for any amendments to the emissions reduction plan to be signalled in the Minister’s response. This is because significant changes to the emissions reduction
plan may require extensive consultation, Cabinet approval and, in some cases, changes to regulations. It is inappropriate to require these within a short timeframe.

Section 5ZG details the Commission’s monitoring role. This requires the Commission to monitor and regularly report on progress towards meeting an emissions budget and the 2050 target. If New Zealand is not on track to meet an emissions budget, the Commission’s reports will therefore indicate this and the Minister will be required to respond.

Tabling requirements
The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendations
Proceed with the insertion of new section 5ZH with amendments to—

- change the timeframe for the Commission to provide its emissions-reduction monitoring report to three (rather than two) months following the publication of a New Zealand GHG Inventory report
- change the timeframe for the Minister to present a written response to the House of Representatives to three (rather than two) months after the Commission provides its annual monitoring report
- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister
- require the Minister to publish the response required by subsection (4).

New Section 5ZI Commission to report at end of emissions budget period

Explanation
At the end of an emissions budget period, the Commission must publish a report that:

- evaluates the progress made in the relevant period
- recommends the amount of banking or borrowing that would be appropriate (if any)
- advises on the amount of offshore mitigation necessary to meet the relevant emissions budget (if any).

This report must be provided no later than two years following the end of the emissions budget period, and must be presented in the House of Representatives and made publicly available.

The Minister is required to present a written response to the Commission’s report within three months of receiving it, and include the Minister’s decisions on banking, borrowing and offshore mitigation. If New Zealand has failed to meet its emissions budget, this report must also explain the reasons for this outcome.

Submissions

Commission’s monitoring reports
One submitter suggested that the Commission’s monitoring reports should specifically assess New Zealand’s progress towards both elements of the target – the biogenic methane component and the net zero component for all other gases.
Another submitter noted that it is implicit that the Commission’s reports will be based on the New Zealand GHG Inventory, but considered that this should be explicit.

One submitter suggested that the report required in section 5ZI is broadened to:

- explain of the principal reasons that an emissions budget has not been met, if applicable
- identify the impacts that meeting an emissions budget has had on local communities, sectors, and industries
- consultation on the impacts of meeting emissions budgets.

**Timing of the evaluation report at the end of each emissions budget period**

Section 5ZI requires the Commission to prepare a report evaluating the success of an emissions budget within two years of the budget period ending.

Some submitters suggested that this is too long after the end of a budget period, particularly if the results affect the ability to meet the subsequent emissions budget. They note, however, that the requirement for the Commission to report annually will mean that there is advanced knowledge of any major changes that may be required.

**Minister’s response**

A very small number of submissions were received on the Minister’s responses to the Commission’s monitoring reports. Each made distinct points.

One submitter suggested that the Commission’s report and the Minister’s response will be housed in a single report, and noted that this calls the Commission’s independence into question.

Some submitters are also concerned that this is too late to make decisions on banking, borrowing or the use of offshore mitigation (if any), New Zealand will already be too years into the next budget period. The PCE is among these submitters, noting that at this stage the Commission would be preparing its advice on the next emissions budget. This requirement would divert the Commission’s attention from looking forward to looking at a budget period that has already expired.

**Analysis**

**Commission’s monitoring reports**

Section 5ZG requires the Commission to regularly monitor and report on progress towards meeting emissions budgets and the 2050 target. As a result, the Commission must track the reductions that are occurring in all GHGs, including biogenic methane, and assess progress towards each component of the 2050 target. We suggest that this is sufficiently clear and that this provision does not need to be amended.

The New Zealand GHG Inventory is explicitly referenced in section 5ZH, which sets out the requirements for the annual progress report. While the Inventory is not mentioned in section 5ZI, the intent is that the Commission’s report at the end of each emissions budget period will build on the annual progress reports and the data included in the New Zealand GHG Inventory. We also note the requirement for the Commission to prepare the evaluation report no later than two years after the end of a budget period correlates to the publication dates for the relevant Inventory data. This does not need to be specifically referenced in section 5ZI, however.

As noted above, section 5ZG requires the Commission to evaluate whether New Zealand is on track to meet the emissions budget and the 2050 target. As such, this will be the critical role of the Commission’s monitoring reports. Sections 5ZH and 5ZI also include a non-exhaustive list of matters that must be included in the Commission’s annual progress report and evaluation report at the close of each budget.
period. These provisions are worded in a way that allows the Commission to consider the additional matters that arose in submissions (e.g., an assessment of the impacts of meeting emissions budgets on local communities, sectors, industries), but does not require it.

Timing of the evaluation report at the end of each emissions budget period
Decisions on banking, borrowing and offshore mitigation must be made after it is clear that New Zealand has met, underachieved or overachieved an emissions budget. This will not be known until the New Zealand GHG Inventory data for the whole period is available. For any given inventory year there is a delay of around 16 months before the data is published.

The Minister’s response to evaluation reports at the end of an emissions budget period
Under section 5ZI, the Minister’s response to each evaluation report at the close of an emissions budget must:

- respond to the Commission’s report
- include decisions on banking, borrowing and offshore mitigation (if any)
- explain the reasons for not meeting the budget period (if appropriate).

New section 5ZI requires the Minister to provide a written response to the Commission’s annual progress reports and its evaluation report at the end of each emissions budget period. This will be a separate report that will be tabled in the House and made publicly available.

Tabling requirements
The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendations
Proceed with the insertion of new section 5ZI with amendments to—

- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister
- require that the Minister’s response to the Commission’s report must be published and give reasons for any departures from the Commission’s recommendations.
4.5 New Sections 5ZJ to 5ZL: Effect of 2050 Target and Emissions Budgets

Legal remedies for a failure to meet the 2050 emissions reduction target or an emissions budget are drafted to be limited to a declaration by a court of law, and an award of costs. Accountability for progress towards the emissions budgets and target is drafted to be supported by a requirement for the responsible Minister to table the declaration and a response from the Government in the House of Representatives. The 2050 target and emissions budgets is drafted to be permissive considerations for public decision makers, ensuring that they can be considered across broader Government decision making. The responsible Minister may issue guidance to Government departments on how to take the 2050 target and emissions budgets into account in decision making.

SECTION 5ZJ Effect of failure to meet 2050 target and emissions budgets

Explanation

New section 5ZJ excludes any legal remedies for failure to meet the 2050 target or an emissions budget other than a declaration to that effect by a court of law, and an award of costs. If such a declaration is made, the Minister must table it in the House of Representatives and provide a Government response.

Submissions

The vast majority of submitters who commented on this clause did not support it. Submitters raised that the perceived lack of legal accountability in the Bill could hinder progress towards its long-term goals. Some submitters set out that the clause limits the ability to bring judicial review proceedings.

Suggested alternatives are broadly grouped into two main options:

- Remain silent on the legal effect of the target and budgets in the Bill, and allow the Courts flexibility in the remedies they award in the event of the target or an emissions budget not being achieved. This reflects the approach in the UK Climate Change Act 2008.
- Set out specific and more stringent consequences of not achieving the target or an emissions budget in the Bill.

Analysis

The current drafting of section 5ZJ is intended to provide for political accountability for the achievement of the target and emissions budgets, and remove ambiguity about the consequences of non-achievement. Political accountability is reinforced by providing for a Court to issue a declaration if the target or an emissions budget is not achieved, but otherwise limiting the available remedies. A critical principle of the Zero Carbon Bill is to provide greater transparency and public reporting (or accountability) of Government’s actions on climate change.

While some submitters suggested incorporating specific consequences of missing the target or a budget in the Bill, few made suggestions for what those consequences should be. Suggestions included requiring the resignation of the responsible Minister, penalties for firms which have not reduced emissions, and requiring the Government to invest in offsetting and emissions reduction projects domestically or internationally to make up any shortfall.

The existing provisions provide for transparency and accountability on Government action on climate change, and provide a strong incentive for successive Governments to meet the emissions budgets and target.
We consider it would not be appropriate to leave open the possibility of claims that challenge Government action seen to be inconsistent with the 2050 target or an emissions budget. With such claims the courts could conceivably direct a future Government to take particular actions to meet the 2050 target or an emissions budget (by, for example, purchasing tradeable emissions units). Meeting emissions budgets or the 2050 target requires many interconnected policy decisions and trade-offs, and such directions could affect Government’s ability to introduce and give effect to broader policy. We consider responsibility for making these decisions ought to sit squarely with a Government accountable to the electorate, not with the judiciary.

In response to submitters’ concerns about judicial review, we note that while clause 5ZJ places limitations on the remedies available to a claimant in relation to the 2050 target or an emissions budget, there are no limitations on a person’s ability to bring judicial review proceedings, and no restriction on remedies available for any claim brought for reasons other than failure to achieve the 2050 target or an emissions budget.

Recommendation
Proceed with the insertion of new section 5ZJ with no change.

SECTION 5ZK 2050 target and emissions budget are permissive considerations

Explanation
New section 5ZK allows broader public decision-makers to take the 2050 target or an emissions budget into account where relevant, but provides that doing so is not mandatory. It also provides that a failure by any person or body to take the 2050 target, an emissions budget, or guidance issued under section 5ZL into account does not invalidate anything done by that person or body.

Submissions
The vast majority of submitters who commented on this section did not support it. Many raised that a Government-wide response to climate change will be required to make the low emissions transition in our economy. They raised that the emissions budgets and targets will need to be considered across Government decisions to ensure they collectively contribute to the long term goals in the Bill. Alternative options from submissions fall into three themes:

- Making the target and emissions budgets mandatory considerations across all broader Government decision making
- Making the target and emissions budgets mandatory considerations for specific decisions under specified Acts
- Remaining silent in the Bill on the extent to which it impacts broader Government decision making.

The PCE submitted that a regulation making power could be included in the Bill to allow for the Executive to set out the specific decisions under specified Acts where consideration of the target and budgets is mandatory.

Analysis
The current drafting for Section 5ZK establishes the target and budgets as permissive considerations. This drafting supports the related Section 5ZJ in establishing political accountability under the Bill, but ensures that there are no limitations on the ability of the emissions budgets and target to be considered across broader Government decision making, and provides confidence to decision-makers that the 2050 target and an emissions budget can properly be considered alongside the requirements of their own statutes.
We do not recommend establishing the target and emissions budgets as mandatory considerations for public decision makers. There are many decisions where the target and budgets will not be relevant, or where considering the target or an emissions budget would be inconsistent with the specific statutory requirements that apply to a decision under its own enactment.

Some submitters suggested setting out the specific pieces of legislation under which the target and emissions budgets should be mandatory considerations. This could be done through future amendments to those relevant Acts.

The PCE’s suggestion to provide for a regulation making power would provide flexibility and allow consideration of the target and budgets to reflect Government priority about where emissions reductions should be achieved. However it would empower a Government to amend Acts of Parliament through secondary legislation. This is known as a “Henry VIII clause”, which are used with caution in New Zealand as they impinge on the normal separation of powers between the executive and the legislature.

This is particularly so when a proposed Henry VIII clause is not tightly confined, as in this case, where the Government would be empowered to amend any other Act to add the 2050 target or emissions budgets as mandatory considerations for any statutory function, power, or duty. The Legislative Design Advisory Committee describes these sorts of Henry VIII powers as being at the more significant end of the spectrum of constitutional impact. It is our position that incorporating the 2050 target or an emissions budget into statutory decision-making on resource management or transport, for example, could be significant for how those decisions are made, and therefore it is appropriate to retain the scrutiny of Parliament by ensuring that such incorporation would have to be achieved through legislative amendment.

Other submitters suggested remaining silent on the impact of this Bill on other legislation, and the extent to which it should be considered in broader decision making. This approach has been suggested as a means of allowing the targets and budgets to be considered widely, but it could have the opposite effect. If the targets and budgets are not expressly established as permissive considerations, decision makers could avoid considering them if there is a risk that their decisions could be challenged on the basis that the target or budgets are not relevant considerations.

We recommend a compromise that retains the express provision that the target and budgets are permitted considerations, but that does not restrict how the common law on the status of the target and budgets might develop in future. This would be achieved by removing the clause that provides that a failure by any person or body to take the target or an emissions budget into account does not invalidate a decision.

Recommendation
Proceed with the insertion of new section 5ZK with an amendment to—

- remove clause 5ZK(2), which is the clause providing that a failure by any person or body to take the 2050 target, an emissions budget, or guidance issued under section 5ZL into account does not invalidate anything done by that person or body.

SECTION 5ZL Guidance for departments
Explanation
New section 5ZL enables the Minister to issue guidance for departments on how to take the 2050 target and emissions budgets into account in decision making. This guidance will provide practical assistance for decision makers who take the 2050 target and emissions budgets into account.
Submissions
A small number of submissions commented on the provision of guidance. Of those that commented, some supported the guidance, while others proposed changes:

- Requests for the guidance to apply beyond Government departments, for example to local authorities and other public decision makers
- Requests for it to be mandatory for the Minister to provide guidance
- Requests for the guidance to be a mandatory consideration for public decision makers.

Analysis
The guidance in this section is intended to help Government departments interpret the target and emissions budgets in their decision making. We do not consider there is any benefit in making it a mandatory requirement for the Minister to provide the guidance, for departments to consider it, or for it to apply beyond Government departments.

The emissions reduction plans, and the NAP, will set out the policies and measures the Government is putting in place to reduce emissions and adapt to climate change. We consider this, alongside any guidance to Government departments, will provide clear policy direction to inform decisions at all levels of Government, without overly constraining decision makers.

Recommendation
Proceed with the insertion of new section 5ZL with no change.
5 Adaptation

This section covers the following proposals:

- NCCRA
- NAP and Progress reports
- Power to request provision of information

There are barriers to effective climate adaptation action in New Zealand due to the absence of any requirement for coordination between agencies, unclear lines of responsibility, and misalignment in how climate change adaptation and resilience objectives are incorporated into legislation and policy. The current legal and policy framework lacks an integrated, nationwide approach to adaptation that has clear objectives and priorities for New Zealanders to understand the risks and to take appropriate action.

The Bill provides a national framework for enhanced action on adaptation, comprising a NCCRA, a NAP, regular progress reporting on the implementation of the NAP, and an adaptation information-gathering power.

5.1 New Sections 5ZM to 5ZP: National climate change risk assessment

New Section 5ZM National climate change risk assessment

Explanation

New section 5ZM requires a NCCRA to assess the risks to New Zealand arising from the effects of climate change and to identify the most significant risks. The Minister must prepare the first NCCRA in accordance with new section 5ZP. The Commission must prepare all subsequent NCCRA's in accordance with new sections 5ZN and 5ZO.

Submissions

Submitters from a broad range of sectors supported the development of a NCCRA.

A few submitters from local Government and business/industry called for alignment with a values-based framework, citing the Treasury's four-capitals model (Living Standards Framework) or, alternatively, for the purpose and intended outcomes of the NCCRA to be clarified, specifically:

- the explicit matters or gaps the NCCRA is intended to address
- the measures and methods used to monitor risks and changes in risks; and
- reference to distributional impacts and unique climate change effects on regions.

These submitters also sought clarity on how they will be required to contribute to the NCCRA.

Business/industry submitters, particularly those from the insurance sector, would like the Bill to define the phrase “most significant risks” that is used in new section 5ZM.

A small number of submitters from research institutes suggested that the Bill would benefit from defining the time period across which risks would be assessed.
Analysis

Defining the NCCRA’s purpose, outcomes, and format

New section 5ZM(1) sets out the matters that a NCCRA must cover. The intention is that gaps in climate change adaptation knowledge will be identified through the preparation of each NCCRA. The Bill does not prescribe the methodology or the format of NCCRAs. This flexibility means that climate impacts can be assessed as they evolve over time, and differ across regions and communities.

A framework for conducting the NCCRA has been developed by a panel of experts in climate change risk and risk assessment, vulnerability assessment, and risk in the context of te ao Māori. While the intent of the NCCRA is to be a science-led, evidence-based assessment of climate change risks, the framework is compatible with a values-based model in line with the Treasury’s living standards framework (i.e., incorporates the four-capitals/wellbeing models of the living standards framework). The NCCRA framework will be made publicly available in September 2019.

Clarification on providing input into the NCCRA

The Bill sets a direction and national framework for adaptation planning, but we consider it not appropriate to prescribe how organisations must contribute to the NCCRA. We expect that organisations, community groups, iwi/Māori, and others may provide evidence to inform the assessment and, therefore, recommend an amendment to new section 5M to require the Commission to proactively engage with people and organisations relevant to its functions.

Identifying key risks in the NCCRA

The NCCRA will apply a systematic approach to assessing, comparing and evaluating various climate-related risks, recognising that risks and their relative significance may change over time. New section 5ZM(1)(b) sets out the considerations relevant to identifying significant risks, including the nature of the risks, their severity, and the need to respond to them over the next six year period. We consider it is not appropriate to further define the concept of ‘most significant risks’ in the Bill because the methodology is set out in the NCCRA framework.

Defining the risk time period

The NCCRA’s scope is wide, and section 5ZN(2)(e) intends the NCCRA to consider the “long-term climate-change trends”. This will require scenarios to be used to analyse future risks and will involve the consideration of assumptions and uncertainties. This scenario-based approach is preferable to defining specific risk time periods.

Recommendation

Proceed with insertion of new section 5ZM with no change.

New Section 5ZN Preparation of national climate change risk assessment

Explanation

New section 5ZN requires the Commission to prepare a NCCRA at least every six years. The section also sets out matters that the Commission must, and may, take into account in preparing the assessment.

Submissions

Submitters were generally supportive of the matters the Commission must take into account when preparing NCCRAs. A small number of business/industry submitters would like to see the Bill include a separate section for infrastructure, and physical and financial capital. Other submitters, primarily NGOs, would like to see NCCRAs consider ocean acidification, and species and biodiversity loss.
Submitters generally supported the need to prepare a NCCRA at least every six years. Some submitters suggested that by reducing the time periods between NCCRAs to four, three or even two years, the NCCRA could be more responsive to unforeseen changes in New Zealand’s vulnerability to climate change effects. Submitters also acknowledged that the time intervals need to be aligned with local and central Government planning horizons.

Strengthening the consideration of effects on iwi/Māori was also a common theme. Iwi/Māori submitters sought opportunities to partner and consult with the Commission and the Government during preparation of a NCCRA (and NAP), and recognition of the Crown’s obligations under te Tiriti o Waitangi, and opportunities to draw on mātauranga Māori and exercise kaitiakitanga. Local Government organisations submitted that considering the “effects on iwi/Māori” should be a requirement when preparing the NCCRA. Specific concern was raised around the vulnerability of iwi and Māori communities (particularly coastal communities) and the need to consider these effects in the NCCRA and address this in the NAP. These issues were also raised in relation to clause 5 in Chapter 2.

Analysis

The climate change adaptation risks identified in the NCCRA are intended to inform the NAP.

Explicit consideration of defined risks in the NCCRA

New section 52M(1)(a) of the Bill requires the NCCRA to assess risks to New Zealand’s economy, society, environment and ecology. This gives scope to consider a broad range of impacts, including risks to infrastructure, financial and physical capital (for further consideration of financial risk, see new section 5ZV below). It also provides for risks from ocean acidification, species and biodiversity loss and new risks in an evolving economy. We consider it unnecessary to explicitly specify the need to consider risks related to these particular areas.

Time period between NCCRAs

The Bill currently proposes that the Commission must, no later than six years after the most recent NCCRA is made publicly available, make the next NCCRA publicly available. The six year intervals between assessments aims to align NCCRAs with local government planning timeframes and land transport investment planning, both of which happen on three-yearly timeframes. Six year intervals also allow sufficient time to evaluate the Government’s progress in implementing the current NAP, and to prepare the next NCCRA (including filling any information gaps). The interval is prescribed in the Bill as a maximum. The Commission does have the ability to bring a NCCRA forward if there are significant changes in the science or urgency of climate change effects.

Considering the effects of climate change on iwi Māori when preparing a NCCRA

The Bill currently requires the Minister to take into account the economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi/Māori, when preparing a NAP. However, there is no explicit requirement to consider the effect of climate change on iwi/Māori when preparing a NCCRA.

To address this concern, we recommend new section 5L is amended so the Commission must consider, in carrying out all its functions and duties, the unique Crown-Māori relationships, including by considering te ao Māori and specific impacts on iwi/Māori. We also recommend that new section 5M be amended to require the Commission to proactively engage with people and organisations relevant to its functions. These recommendations are discussed in this report in relation to new sections 5L and 5M, respectively.
Recommendations
Proceed with the insertion of new section 5ZN with a minor amendment to—

- reflect the intent of risk assessments taking into account current and future climate change risks (at 5ZN(2)(e)).

New Section 5ZO Assessment must be presented to Parliament and made publicly available
Explanation
New section 5ZO—

- requires the Commission to provide the Minister with a copy of a NCCRA that it prepares; and
- requires the Commission to make the assessment publicly available once it has been provided to the Minister; and
- requires the Minister to present a copy of the assessment to the House of Representatives.

Submissions
No submitters referenced this clause directly. However, many submitters mentioned they were in support of the adaptation clauses throughout the Bill (Part 1C) as a whole.

Some submissions about the effectiveness of the Commission’s advice more generally sought for reports to be made available to Parliament in a more timely manner.

Analysis
The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publishing reports, including the NCCRA.

Recommendation
Proceed with the insertion of new section 5ZO with amendments to—

- require that the Minister must present a copy of the Commission’s assessment to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.
- require that the Commission must publish the assessment, along with any evidence commissioned to support its preparation, as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

New Section 5ZP Minister must prepare first national climate change risk assessment
Explanation
New section 5ZP requires the Minister to prepare the first NCCRA, present the assessment to the House of Representatives, and make the assessment publicly available. The Minister must complete these actions within one year after new Part 1C comes into force.

Submissions
A few submitters oppose the preparation of the first NCCRA being assigned to the Minister and would prefer the Commission to undertake this assessment. Submitters concerns are that NCCRAs should be
independent, science-led and evidence-based documents, free from Government influence. Some acknowledge the urgency of climate change action and, therefore, accept this provision in the Bill. Submitters would also like to ensure that the Government will undertake genuine, widespread public consultation in preparing the first NCCRA. For example, the Society of Local Government Managers submitted that:

“This is a direct contradiction of the rationale for establishing the Commission. The assessment is a foundation document, and rightly or wrongly the first assessment will set precedents and form the basis for future assessments... we reluctantly accept the position the Bill has reached and would like to send a signal to Parliament that we expect the Government to apply the same principles of independent advice and credible science to the development of the first assessment that [we] expect [will] apply to others. We’d also expect genuine engagement.”

**Analysis**

To ensure immediate action on the first NCCRA, this will be the responsibility of the Minister. The need for suitable resources, technical expertise and the ability to gather and coordinate data makes the Minister an appropriate choice to be responsible for this function until the Commission is fully operational. This will be supported by a robust process involving an independent panel and methodology.

This approach also ensures that the Commission, in the period immediately after its establishment, will be able to focus on its advice on emissions budgets. Once the Commission is fully operational, it will be the most appropriate agency to undertake the NCCRA as it will hold an independent, expert-driven, advisory role with suitable resources.

The assignment of functions is also discussed in this report in relation to new section 5J.

**Recommendation**

Proceed with the insertion of new section 5ZP with no change.

### 5.2 New Sections 5ZQ to 5ZU National adaptation plan and Progress reports

**New Section 5ZQ National adaptation plan**

**Explanation**

New section 5ZQ requires the Minister to prepare NAP in response to each NCCRA. The NAP must set out, among other things, the Government’s objectives for adapting to the effects of climate change and how the Government proposes to meet those objectives. In preparing the plan, the Minister must take into account specified matters and must undertake public consultation.

**Submissions**

Two key topics were raised by submitters:

- how the NAP will be implemented and whether it should be given direct legal effect; and
- how the process of developing a NAP can best provide for participation of those affected.

**Implementation and legal effect**

Submissions from professional bodies and some NGOs, research institutes and universities raised concern that in the absence of regulatory methods to implement the NAP, it would have no legal effect. The NZ Law Society commented that “there is no provision for any regulatory methods to implement the National
Adaptation Plan: the plan itself would seem to have no legal force and effect.” Environmental Defence Society Incorporated submitted that “a clearer legal link needs to be established between adaptation plans and the statutory frameworks under which they would be implemented, especially the Resource Management Act (for, among other things, land use decisions) and Local Government Act (for, among other things, infrastructure planning and funding decisions).

Local Government submitters sought clarification on how they are expected to give effect to the NAP. They questioned whether the NAP should be enforceable and suggested linking the NAP to existing statutory frameworks (such as the RMA, EEZ, LGA) to provide clear direction for local Government. They also raised questions about the provision of funding and resource for local Government to achieve regional adaptation outcomes, alignment with their long-term plans and recognition of specific regional and demographic challenges. Many local Government submitters indicated they were eager to work closely with central Government on the implementation of the NAP but were unclear about the extent of consultation.

Most submitters from business/industry that commented on the NAP, supported it being a stand-alone document that sits outside existing statutory frameworks.

Participation for those affected
Iwi/Māori submitters mainly focused on the need for co-development and partnership with tangata whenua while developing the NAP. NGOs, research institutes and universities were also concerned about realising obligations under te Tiriti o Waitangi, and narrow timeframes for delivering the NAP.

The few business/industry submitters who commented on the NAP suggested that central Government work with business/industry and local Government to seek direction on the NAP from a regional and investment/planning perspective.

Analysis
Implementation and legal effect
New Zealand’s international obligations (eg, under the UNFCCC, Paris Agreement and Sendai Framework) require evidence of a ‘planned approach’ to climate change adaptation. The Climate Change Adaptation Technical Working Group also recommended that adaptation mechanisms be legislated to ensure a planned approach to climate change adaptation is enduring across political, planning and financial cycles.

The NAP is intended to be a strategic, direction-setting document, rather than a regulatory one. The requirement in the Bill holds the Government accountable for taking a planned approach to climate change adaptation. New section 5ZS of the Bill requires the Commission to monitor and review the progress made by the Government on implementation of the NAP every two years. These reports aim to highlight any shortcomings of the Minister to respond appropriately to the risks outlined in the NCCRA. These reports must be presented to Parliament and made publicly available, and the Minister is required to provide a written, public response.

The Minister is responsible for preparing the NAP, and for implementing it. Implementation is likely to include a broad range of policy responses, and may lead to regulatory change proposals in future.

The RMA’s plan-making provisions already require that local authorities have regard to plans prepared under other Acts. In addition, work is underway to consider how to ensure that New Zealand’s resource management system is able to cope with increasing natural hazard risk and the effects of climate change.
This work, being undertaken under the umbrella of a Community Resilience Group (CRG) work programme, will include considering the potential need for, and form of, further national guidance under the RMA (such as an National Policy Statement or National Environmental Standard, or non-statutory guidance) to assist local authorities to manage and adapt to the effects of climate change.

The CRG work will be complemented by work undertaken as part of the comprehensive review of the resource management system. The review will consider how climate change adaptation (and mitigation) are addressed under the RMA, including how to align the RMA with the purposes and processes outlined in the Bill.

These parallel work streams, rather than this Bill, are the appropriate vehicles to most comprehensively consider climate change adaptation issues, including whether changes are required to most effectively implement the NAP.

Participation for those affected
New section 5ZQ(6) requires the Minister to consult publicly on the draft NAP. Although local Government is not mentioned explicitly in the Bill, it is recognised that in order for the NAP to be a realistic set of objectives, strategies, policies and proposals, early and on-going consultation with communities and organisations (including local Government, businesses, investors, iwi/Māori) will be necessary.

New section 5ZQ(4)(f) also requires the Minister to take into consideration the ability of communities and organisations to undertake adaptation action. This will necessitate engagement with those parties. While the Bill does not prescribe how or who should be consulted we consider it does allow the Government to work collaboratively with the public, and find innovative ways for public participation.

Recommendation
Proceed with the insertion of new section 5ZQ with no change.

New Section 5ZR National adaptation plan must be presented to Parliament and made publicly available

Explanation
New section 5ZQ requires the Minister to prepare a NAP in response to each NCCRA. The NAP must set out, among other things, the Government’s objectives for adapting to the effects of climate change and how the Government proposes to meet those objectives. In preparing the plan, the Minister must take into account specified matters and must undertake public consultation.

Submissions
Submissions were generally supportive of the proposals set out in new section 5ZR. Some submitters commented on the need to make the NAP available to the public within a two-year window of the publication of the NCCRA. For example, the Insurance Council of New Zealand supported the requirement for the Minister to present the NAP to the House of Representatives, and make the plan publicly available within two years of the corresponding NCCRA being made public.

37 The CRG is an inter-agency group involving the Department of Internal Affairs, Ministry of Civil Defence & Emergency Management, Ministry for the Environment, The Treasury, Land Information New Zealand, the Earthquake Commission, Ministry of Business, Innovation and Employment, and Local Government New Zealand.
Analysis
The publication of the NAP, and its presentation to Parliament, are important steps to help maintain accountability for action on climate change adaptation.

We consider that two years is the maximum length of time that should be allowed between publishing the most recent NCCRA and publishing the NAP.

Recommendation
Proceed with the insertion of new section 5ZR with no change.

New Section 5ZS Progress reports on national adaptation plan
Explanation
New section 5ZS requires the Commission to provide to the Minister progress reports every two years that evaluate the implementation of the adaptation plan.

Submissions
Submitters generally supported the concept of progress reports, though there were differing views on their timing and contents.

Submitters from research institutes and community groups were mostly in favour of progress reports, citing a need for transparency. Concerns from these submitters mostly related to how the Commission would access the information needed to evaluate NAPs and monitor changes to climate change risks.

Local Government and business/industry submitters sought specific requirements for the Commission to consult on the development of progress reports, particularly with local Government and infrastructure owners. These submitters considered this direct consultation would improve the quality of the Commission’s progress reports.

A two-yearly cycle garnered the most support from submitters. One submitter suggested changing the biennial progress reporting requirements to yearly.

Analysis
Progress reports are linked to specific NAPs. The evaluation of whether and how climate change adaptation risks have changed will be reflected in future NCCRAs, which will help to maintain a consistent approach over time.

Recommendations relating to the Commission’s consultation and engagement more widely is discussed in new section 5M. Broadly, it will be important for the Commission to consult proactively with people and organisations relevant to its functions, in order to obtain the information that it needs. We do not consider it necessary for the Commission to be required to specifically consult for the purpose of producing progress reports.

We consider biennial progress reports are better suited than annual progress reports, as this will enable to success of actions to be reported on, not just the implementation of action itself. We also note the example of the UK monitoring and reporting on national adaptation programmes, in which a longer period for reviews provided for better evaluation.³⁸

³⁸ see 10 years of the UK Climate Change Act, Grantham Research Institute, London School of Economics, 2018
Recommendation
Proceed with the insertion of new section 5ZS with no change.

New Section 5ZT Progress reports must be presented to Parliament and made publicly available

Explanation
New section 5ZT—

- requires the Minister to present a copy of a progress report to the House of Representatives; and
- requires the Commission to make a progress report publicly available once it has been provided to the Minister.

Submissions
No submitters referenced this clause directly. However, many submitters expressed support for the adaptation clauses throughout the Bill (Part 1C) as a whole.

Some submissions about the effectiveness of the Commission’s advice more generally sought for reports to be made available to Parliament in a more timely manner.

Analysis
The publication and tabling requirements for the Commission’s reports are discussed in chapter 7.2 of this report. We recommend amendments to shorten the timeframes for tabling and publication.

Recommendation
Proceed with the insertion of new section 5ZT with amendments to—

- require that the Minister must present a copy of the Commission’s report to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- require that the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister.

New Section 5ZU Minister must respond to progress report

Explanation
New section 5ZU requires the Minister to publicly respond to a progress report within six months after receiving it.

Submissions
No submitters referenced this clause directly. However, many submitters mentioned they were support the adaptation clauses throughout the Bill (Part 1C) as a whole.

Some more general submissions on the Commission’s functions sought for transparency and consistency in the way the Commission’s advice is taken into account.

Analysis
We recommend changes to make the process for the Government’s responses to advise of the Commission consistent across the Bill, including that a copy of each response required by the Bill should be presented to Parliament. Those changes are discussed further in chapter 7.2.
Recommendation

Proceed with the insertion of new section 5ZU, with an amendment to—

- require the Minister to present a copy of the response to the House of Representatives.

5.3 New Sections 5ZV to 5ZW: Power to request provision of information

Currently, there is no formal requirement for New Zealand organisations to report on the risks that climate change poses to their operations, either in terms of physical or financial impacts. The actions that organisations are taking to manage the risks posed by climate change are also unclear. As a consequence, there is no comprehensive national understanding of which organisations will face the most severe impacts in New Zealand over the medium-long term, and which are the most vulnerable.

Requiring certain organisations to prepare effectively for climate change and report publicly on their work creates an opportunity for greater public benefit. This would allow for people, communities, Government and other stakeholders to be engaged on important issues or decisions. Risks may be identified, along with barriers to adaptation, and better, more timely information can inform investment decisions about how and when to adapt.

New Section 5ZV Minister may request certain organisations to provide information on climate change adaptation

Explanation

New section 5ZV allows the Minister to request that certain organisations – most notably some central agencies, local Government and lifeline utilities – provide information on, among other things, the effects of climate change in relation to the services provided by the organisation and how the organisation proposes to adapt to those effects. We refer to this as the adaptation reporting power.

Submissions

Submissions were generally supportive of an adaptation reporting power, as it provides greater transparency and information obtained would inform the NCCRA and subsequent NAPs.

Some submitters questioned the need for an adaptation reporting power, raising risks of duplicating existing reporting obligations and the need to protect confidential or commercially sensitive information. Other submitters called for the reporting power to be extended to include more organisations, to cover information about mitigation (as well as adaptation), or to be supported by an explicit enforcement mechanism.

The need for an adaptation reporting power

Submissions from research institutes and academia mostly supported an adaptation reporting power. Business/industry submitters would like to see the data gathered from the reporting power used to inform the NCCRA, and subsequent NAPs.

Submitters recommended that organisational reporting obligations should be aligned with other reporting requirements. Some business/industry submitters pointed out that standardised reporting on financial climate change risks and opportunities should already be embedded in mainstream corporate regulation, so separate climate change legislation to capture these risks is unnecessary and would add an additional regulatory layer to existing fiduciary duties. Local Government submitters were generally supportive of an information gathering power for adaptation, but similarly submitted that care is needed
to ensure it does not impose too great burden on reporting organisations or duplicate existing obligations.

For example, Mercury submitted that it “has commenced aligning its annual reporting with the recommendations of the Taskforce on Climate-related Financial Disclosures. The New Zealand Stock Exchange has also issued a guidance note relating to environmental, social and governance reporting while we understand the Ministry for the Environment and the Ministry of Business, Innovation and Employment are working together on the development of a climate disclosure regime. These may all be useful models but ideally one model should be agreed and applied to businesses.”

Extending the adaptation reporting power to more organisations or to mitigation information
Some community groups and NGO submitters would like banks and insurance companies to be added to the list of reporting organisations. For example, Auckland Council would “like to see insurance companies included in the disclosure of climate risk, as it is important for the public to understand areas that may be at future risk of being uninsurable.” Several community groups, NGO, and local Government submitters also recommended the reporting power be extended to include information about climate change mitigation.

Provisions for protection of information
Some business/industry submitters expressed concern that the Bill does not provide adequate protection of commercially sensitive or confidential information gathered through the adaptation reporting power. Lifeline utility providers, in particular, called for greater protection of this information. These submitters would like to see the adaptation information gathering function accompanied by explicit consultation requirements beyond what the Bill’s regulation making powers currently offer.

Provisions for enforcement
Some business/industry submitters consider the obligations on organisations to respond to requests made through the reporting power are not strong enough. They sought the inclusion of an enforcement provision in the Bill to encourage compliance. Community groups, NGOs, research institutes and academia also sought clarification of consequences for non-compliance.

Analysis
The need for an adaptation reporting power
The purpose of the reporting power is to make information available to decision-makers and the public about the risks from climate change that affect key public infrastructure and services and the actions being taken to manage or adapt to these risks. In doing this, it aims to encourage organisations to better prepare for the impacts of climate change.

The information required through the reporting power must identify:

- the current and future effects of climate change in relation to the reporting organisation’s functions
- the reporting organisation’s strategies for adapting to climate change
- where identified, timeframes for action;
- an assessment of progress made by the organisation towards implementing its proposals; and
- any matters specified in regulations.

Submitters expressed concern that the reporting power could place an undue burden on reporting organisations or duplicate their existing reporting obligations. Several submitters specifically referred to the framework used in the Task Force on Climate-related Financial Disclosures (TCFD).
The TCFD was established by the Financial Stability Board in 2015, at the request of the G20, with the purpose of developing voluntary, consistent climate-related financial risk disclosures for use by companies in providing information to investors, lenders, insurers and other stakeholders. The TCFD framework, published in June 2017, is widely regarded as international best practice for climate-related financial disclosures. The framework is structured around four thematic areas that represent the core elements of how entities operate: governance, strategy, risk management, and metrics and targets.

Officials propose that those four areas be added to the list of information in sections 5ZV(1)(b) and (1)(c) that the Minister may request of a reporting organisation.

The changes will make it clearer that information and formats organisations may already use to make financial disclosures, could also be used to help satisfy information requests made under the Bill. Revising the adaptation reporting power to include language that is aligned with the TCFD framework may also encourage organisations to report on climate related financial disclosures.

*Extending the adaptation reporting power to more organisations or to mitigation information*

Submissions highlighted the need to understand and prepare for risks to the financial system. Adapting to the effects of climate change and facilitating a just transition to a low-emissions and climate-resilient economy will require maintaining financial system stability. To achieve this, some submitters called for banks and insurance companies to be included in the list of reporting organisations.

Other work is underway to ensure that the legislative system provides for understanding and management of the financial stability risk from climate change in New Zealand. We consider it is preferable to integrate climate change considerations into the core functions of those institutions that have responsibilities in relation to financial stability, than to create new, standalone requirements through the Bill.

Non-legislative work is also expected to contribute to a better understanding and management of climate change risks. This includes the Reserve Bank of New Zealand’s recently-released Climate Change Strategy, and the legal opinion on fiduciary duties and climate change that has been commissioned by the Aotearoa Circle (a public-private partnership launched late last year) and is expected to be completed by early October 2019.

Chapter 7.1 discusses the Commission’s access to information and recommends extending a power to request information equivalent to the Minister’s power to the Commission under new section 5ZV.

*Provisions for protection of information*

The Minister will be able to request information on climate change adaptation from organisations to support his or her functions under new sections 5ZQ and 5ZV of the Bill. This may include commercially sensitive information.

The Privacy Act 1993 (Privacy Act) and the Official Information Act 1982 (OIA) will apply to information held by the Minister under the Bill, and provide grounds to withhold certain information if the requested information is commercially sensitive. However, those Acts are about the rights of requesters to obtain

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39 For example, the Government has agreed to investigate a mandatory regime for climate-related financial disclosures (in response to recommendation 7.4 in the Productivity Commission’s final report on a low emissions economy), work which will be led by the Ministry of Business, Innovation and Employment and the Ministry for the Environment. The Treasury is leading Phase 2 of the review of the Reserve Bank Act 1989, which includes consideration of monitoring and managing the risks that climate change poses to New Zealand’s financial stability, in light of the recommendations of the TCFD.
information when requesting official information and private information respectively, and do not provide blanket coverage for the protection of commercially sensitive information.

These Acts are limited in their protection of sensitive information gathered through the adaptation reporting power because:

- the OIA grounds are subject to a distinct request for specific information and an assessment of the public interest; and
- the Privacy Act applies only to natural persons, so would not protect commercially sensitive information from non-natural persons like companies, which many reporting organisations will be.

It is important to note that not all information provided to the Minister through the adaptation reporting power will necessarily be publicly disclosed or disaggregated. However, it will be important that reporting organisations under the Bill have confidence in the way that their information will be handled. We therefore propose strengthening the protection of sensitive information in the Bill. At the same time, the protection cannot be absolute if the Minister is to discharge his or her adaptation functions properly.

If a reporting organisation supplies information in response to the Minister’s request, and the information is not in the public domain, an appropriate measure would be to require the Minister to consult with the organisation before deciding to release the information. This would provide an opportunity for the reporting organisation to identify the parts that contain commercial or confidential information, and would help the Minister assess whether release of the information is appropriate.

Provisions for enforcement

Accurate and timely climate related reporting will be essential for prioritising action (at national, regional and local scales), and to provide a basis for quantifying financial and economic costs and benefits. However, we do not consider a mechanism for enforcing compliance with the adaptation reporting function of the Bill is necessary, for the following reasons:

- most reporting organisations are public bodies, and it is expected that they will comply with the requirements of the Bill. Offences and penalties are not appropriate for these bodies as imposing fines on them will only amount to a transfer of public money.
- in respect of the non-public bodies such as lifeline utility providers, a flexible and collaborative approach to reporting is preferable.

The Government is currently evaluating the appropriate regulatory balance when it comes to how organisations report on climate change. It is considering addressing these issues through future amendments to the CCRA proposed for introduction later this year, as well as through an investigation into climate-related financial disclosures in response to recommendation 7.4 of the Productivity Commission’s final report on a low emissions economy.

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Recommendations
Proceed with the insertion of new section 5ZV with an amendment to—

- require that the Minister and Commission cannot publicly disclose information obtained through their adaptation reporting powers (unless it is already in the public domain), except-
  o if non-disclosure would materially limit the Minister or the Commission's ability to undertake adaptation functions under the Bill, and
  o following consultation with the person or organisation to whom the information is confidential
- align the language in new section 5ZV(1)(b) and (c) with the four areas covered by the TCFD framework: governance, strategy, risk management, and metrics and targets.

New Section 5ZW Regulations relating to requiring provision of information
Explanation
New section 5ZW allows for regulations to be made that specify matters relating to information requests made under new section 5ZV.

Submissions
Submitters were generally supportive of a regulation-making provision relating to information requests made under the adaptation reporting power.

Some local Government submitters asked for explicit consultation requirements to be set out in the Bill, for greater clarity on expectations of the reporting requirements, and for measures (e.g., standardised reporting) to avoid duplication of reporting. A common reason for these views is concern about cost to meet the reporting requirements.

Business and industry submitters, particularly lifeline utility providers, sought clarity on the regulation-making powers, and raised concerns about duplication of existing reporting requirements, especially where it may over-extend current resources or funding allocated to existing fiduciary duties. These submitters also sought for consideration to be given to commercially sensitive and confidential information.

Analysis
The process to develop these regulations will consider further detail, including the frequency, timing and potential cost implications of complying with them.

Under new section 5ZW(3), the Minister must consult the Commission and the reporting organisations that the Minister considers may be affected by the proposed regulations before these regulations are made.

We expect that information gathered during the development of the first NCCRA and NAP will help to establish what regulations might be needed to support future iterations of the NCCRA. We do not expect this reporting to be onerous on these organisations over and above existing requirements to understand climate change risks.

Recommendation
Proceed with the insertion of new section 5ZW with no change.
6 Consequential amendments

This chapter presents a clause-by-clause summary of submissions and officials’ analysis and recommendations relating to provisions in the Bill to make consequential amendments to the principal Act in relation to:

- Obligation to maintain confidentiality
- Gazetting of targets
- Regulations related to targets
- Amendments to other enactments.

6.1 Clauses 10 to 14: Consequential amendments

Clause 10 Section 99 amended (Obligation to maintain confidentiality)

Explanation

Clause 10 amends section 99 of the principal Act. The amendments—

- require the Commission to keep information confidential; and
- allow otherwise confidential information to be disclosed to the Commission.

Submissions

Submitters expressed concern about the obligation of confidentiality that would apply to the Commission as a result of this clause, as it could compromise transparency. Suggested changes included:

- removing clause 10 from the Bill
- removing section 99 from the principal Act
- if the clause is retained, clarifying that the presumption of availability in the OIA will apply to all information held by the Commission, by permitting disclosure “as provided under this Act or any other Act, including the Official Information Act 1982”
- replacing this clause with an alternative obligation, namely a duty to maintain secrecy, except where disclosure serves the statutory purposes of the Commission (similar to the Children’s Commissioner or the PCE).

Other submitters suggested that there should be more protection for confidential information, particularly in relation to adaptation reporting.

Analysis

Section 149 of the CCRA facilitates the exchange of information between any person with functions or powers under the Act (which will include the Commission), the Registrar and the inventory agency. However, people and agencies with certain functions under the CCRA are required to keep information confidential by section 99.

The intention of clause 10 is to remove limits on information-sharing between those agencies and the Commission. Clause 10(3) does this – providing that despite the obligations of confidentiality in section 99, those agencies may disclose information to the Commission for the purpose of assisting the Commission to perform its functions and duties and exercise its powers.

Subclauses 10(1) and (2) were intended to maintain the confidentiality of that information once disclosed to the Commission. However, as drafted, they unintentionally apply the obligation of confidentiality to the Commission more broadly. We recommend that the scope of this obligation is narrowed so that it
only maintains the confidentiality of information that was already confidential under section 99 of the CCRA.

The Government is currently undertaking a review of the CCRA which will include a general review of section 99. Accordingly, the Government intends to consider addressing general submissions on that section through future amendments.

**Recommendation**
Proceed with clause 10 with an amendment to—

- narrow the scope of the obligation of confidentiality such that it only maintains the confidentiality of information that was already confidential under section 99.

**Clause 11 Section 224 amended (Gazetting of targets)**

**Explanation**
Clause 11 amends section 224 of the principal Act to clarify that the targets referred to in that section do not include targets for GHG emissions.

**Submissions**
There was little comment on this clause. There was some confusion about whether the Bill saves the existing GHG reduction target which was set pursuant to section 224 in 2011.

**Analysis**
Clause 14 revokes the target set in 2011 for a 50% reduction in New Zealand GHG emissions from 1990 levels by 2050.

A number of other targets have been set pursuant to section 224 (for example, targets for renewable electricity generation and for per-capita transport emissions). The Bill does not alter those targets.

Since targets for New Zealand’s GHG emissions will be set through the Bill (and emissions budgets will be made under the Bill), clause 11 amends section 224 so that other targets for GHG emissions may no longer be set under that section.

We consider that it would be clearer to repeal section 224 entirely. The Bill provides alternative means of making formal statements of Government policy targets (eg, through emissions reduction plans) and retaining section 224 is unnecessary and likely to be confusing. Existing targets set pursuant to section 224 would remain unaltered – savings for these targets are discussed in this report in relation to clause 9.

**Recommendation**
Proceed with clause 11 with amendments to—

- repeal section 224 entirely.

**Clause 12 Section 225 repealed (Regulations relating to targets)**

**Explanation**
Clause 12 repeals section 225 of the principal Act. That section allows for regulations to be made that set targets, and is no longer needed now that the 2050 target will be set in the Act.

**Submissions**
There was little comment on this clause.
Analysis
Clause 12 repeals section 225 of the CCRA, which is no longer needed.

Recommendation
Proceed with clause 12 with no change.

Clause 13 Amendments to other enactments
Explanation
Clause 13 gives effect to the consequential amendments to other enactments contained in Schedule 2 of the Bill.

Submissions
Submitters expressed a range of views about whether an independent Crown entity was the best institutional form for the Commission. Those submissions are summarised in relation to new section 5C.

Submitters were generally in favour of the Official Information Act applying to the Commission.

Analysis
Clause 13 adds the Commission to the list of entities in Schedule 1, Part 3 of the Crown Entities Act (Independent Crown Entities).

Both the Ombudsmen Act 1975 and the Official Information Act 1982 will apply to the Commission as an independent Crown entity. For the purpose of clarity and accessibility, clause 13 adds the Commission to the list (in Schedule 1, Part 2, of the Ombudsmen Act 1975) of entities to which those Acts apply.

Under section 47 of the Crown Entities Act, members of the Commission will be entitled to receive remuneration at a rate and of a kind determined by the Remuneration Authority in accordance with the Remuneration Authority Act 1977. For the purpose of clarity and accessibility, we recommend that “The members of the Commission” is also added to the list in Schedule 4 of that Act (Officers whose remuneration is to be determined by Authority).

Recommendation
Proceed with clause 13 and Schedule 2 with an amendment to—

- add the members of the Commission to the list in Schedule 4 of the Remuneration Authority Act 1977.

Clause 14 Notice revoked
Explanation
Clause 14 revokes the Climate Change Response (2050 Emissions Target) Notice 2011.

Submissions
There was little comment on this clause.

Analysis
Clause 14 revokes the target set in 2011 for a 50% reduction in New Zealand GHG emissions from 1990 levels by 2050, which is superseded by the target in the Bill.

Recommendation
Proceed with clause 14 with no change.
7 Additional recommendations
This chapter covers recommendations in relation to matters that either were not reflected in an existing section of the Bill, or relate to a number of provisions distributed throughout the Bill.

Specifically, additional recommendations are made in relation to:

- Commission’s powers and funding
- Transparency measures – reports and responses
- IAS emissions.

7.1 Commission’s powers and funding

Explanation
The Bill gives the Commission a range of advisory and monitoring functions. Decisions about emissions budgets, emissions-reduction policies and the NAP remain the responsibility of the Government.

Submissions
Some submitters sought powers for the Commission to make or enforce decisions. Some sought additional powers for the Commission to support its functions, such as powers to obtain information. Some sought measures to secure the Commission’s funding (to ensure that it is able to carry out its functions effectively), or for changes to ensure that the Commission’s reports are effective in helping to hold the Government to account.

Decision-making powers
Some submitters sought decision-making powers for the Commission, to:

- set and revise targets and emissions budgets
- make related decisions, for instance restricting the use of forestry offsets, banking and borrowing between emissions-budget periods, accepting offshore mitigation, or including emissions from IAS
- take specific decisions about the NZ ETS, such as setting or influencing the price of units, managing the entry of agriculture into the scheme, or phasing out the allocation of units to trade-exposed industries
- make substantive policy decisions directly – such as directing the action of key sectors, or controlling the carbon price.

Common reasons given for these views included that the setting of emissions targets and budgets should be based impartially on technical considerations, and not subject to political influence, or that relying on Government decisions will result in compromise and delay, which cannot be afforded.

Submitters commonly drew on the example of the Reserve Bank setting monetary policy at arms-length from Government, particularly in relation to more technical decisions.

There was also a suggestion to establish a threshold (of 75% of Parliament) for overturning a recommendation of the Commission.
Enforcement powers
Submitters sought for the Commission to have a role in monitoring and enforcing compliance with climate change policy: both the Government’s compliance with the targets and emissions budgets, and public compliance with policy measures that might be implemented to achieve them.

Powers to support Commission’s functions
Submitters sought additional powers for the Commission to support its functions in the Bill, such as enshrining the Commission’s right to access Government GHG data, empowering it to engage in matters relevant to its role, and giving it the ability to seek independent research and analysis. Some suggested a need, given the breadth of the Commission’s role, for it to have broad powers to require information (with corresponding safeguards), and for general empowering provisions.

Security of funding
Submitters expressed concern that the Commission would not be adequately resourced to carry out its wide range of functions, or that its effectiveness might in future be impaired by cuts to its funding. Some submitted that the Commission’s budget should include funding for research. In general, submitters sought measures to secure adequate funding for the Commission, and to separate funding decisions from political cycles. Suggestions included:

- safeguard the Commission’s funding in the way that we do for courts
- appropriate budget for multiple years – at least 4 years, to be longer than an electoral term
- ensure that the Remuneration Authority sets remuneration for commissioners
- give Parliament greater oversight for the Commission’s funding
- empower the Commission to borrow money if necessary to perform its functions
- enable the Commission to collect levies
- support part of the Commission with resource committed from central and local governments, and corporations and organisations.

Analysis
Decision-making powers
We remain of the view that the Commission should have advisory and monitoring functions, and not decision-making powers. It is important that decisions about climate policy sit with elected decision-makers, who are accountable to the public through the democratic process. An advisory-only role will also allow the Commission to focus on its role as an expert advisor, and minimise risks to its independence.

We note that Cabinet has agreed specific functions for the Commission in relation to the operation of the NZ ETS. Those functions (which are not included in the Bill but will be progressed in other legislative amendments) are also advisory in nature.
Comparison with Reserve Bank’s monetary policy functions

The Reserve Bank of New Zealand (RBNZ) is the central bank for New Zealand, and has specific functions to formulate monetary policy through a monetary policy committee (MPC).

It formulates monetary policy within parameters set in legislation, and subject to a remit issued by the responsible Minister which sets out operational objectives for the function\(^{41}\).

In formulating monetary policy, the MPC has “regulatory independence” – that is, power to make decisions itself. The scope of the decisions it can make are narrow, and in performing the function, the MPC must have regard to matters provided for in the remit issued by the Minister.

On the other hand, the Commission will have (among other functions) responsibilities to advise on decisions about emissions budgets and the policies to achieve them.

It will not have decision-making powers, but in preparing its advice on emissions budgets and emissions-reduction plans it must act independently of Government policy – it will have a very high degree of “analytical independence”.

Decisions about emissions budgets and emissions-reduction plans are more like fiscal policy than they are like monetary policy. They involve value judgements about the burden of cost and how it is distributed, and have fiscal implications for the Government’s budget.

The Government comprises democratically elected officials with responsibility for the well-being of New Zealanders across all policy areas (eg, health, education, water quality, regional economic development), and responsibility for the budget, and is best placed to make these types of decisions. The independent, expert advice of the Commission will inform the Government, and promote transparency and accountability for the decisions the Government takes about climate change policy.

Enforcement powers

We consider that enforcement powers do not properly reside with the Commission.

Powers to support Commission’s functions

The Commission will be concerned with a wide range of matters, and it will be essential that it has access to the information that it needs to perform its functions effectively, as well as the ability to undertake research and seek external advice. The provisions of the Bill together with existing legislative provisions, go some way to supporting this, for example:

- sections 17 and 18 of the Crown Entities Act provide that a statutory entity may do anything that a natural person may do for the purpose of performing its functions (except as limited by law). Crown entities may employ employees, appoint subcommittees or contract advisors
- in the Bill, new section 5M will empower the Commission to consult broadly
- section 149 of the CCRA facilitates the exchange of information between people and entities with functions and powers under that Act, and will have the effect of empowering the Commission to request information, for example from the Registrar or the inventory agency

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41 Or an Order in Council made by the Governor-General on the advice of the Minister which may direct the Bank to focus on an economic objective – either one of its legislative objectives or a separate objective – for a limited time.
• in the Bill, new section 5ZV requires the Minister to share with the Commission any information received from “reporting organisations” in response to a formal request by the Minister for information about adaptation.

Although we anticipate the Commission having access to most relevant information through these and non-statutory channels, there is a risk that, if the Minister does not exercise the power to request adaptation information, the Commission might not otherwise be able to access the information it needs to perform its risk assessments and adaptation progress reports.

It would therefore be useful to allow the Commission also to require adaptation information from reporting organisations, equivalent to the Minister’s power in new section 5ZV.

Security of funding
It will be important that the Commission is adequately resourced to perform its functions.

Commissioners, as members of an independent Crown entity, will be entitled to remuneration determined by the Remuneration Authority. We suggest making this explicit by adding the Commission to the list of entities in Schedule 4 of the Remuneration Authority Act 1977.

The Commission is intended to be Crown funded via a specific appropriation. As part of Budget 2019 the Government set aside a contingency for the Commission. The contingency has a four year horizon and once the amounts are confirmed for each of the four years, unless the Government decides otherwise, the amount appropriated for year four becomes the ongoing baseline funding for the Commission.

We consider it inappropriate to legislate further measures to secure funding.

Recommendation
Include in the Bill amendments to—

• extend to the Commission the power to request information about climate change adaptation from the reporting organisations listed in new section 5ZV of the Bill.

7.2 Transparency measures – reports and responses

Explanation
The following matters relate to provisions scattered throughout the Bill.

The Commission provides its reports to the Minister, and the Bill requires the Minister to table each of the Commission’s reports in Parliament as soon as practicable, but within 12 weeks, after receiving it. The Commission must publish its reports.

The Minister is required to respond to each of the Commission’s reports in a variety of ways.

Submissions
Common themes in submissions were:

• for the Commission to report directly to Parliament or the Speaker, rather than the Minister. Some submitters made a distinction between advice (which would be delivered to the Minister) and monitoring reports (which would be delivered to Parliament, perhaps via a select committee)
• alternatively, for the tabling and publication requirements to be tightened, so that reports are tabled and published immediately on provision to the Minister, or within a shorter period of time.
Submitters identified inconsistencies in how the Minister is required to consider different reports of the Commission (e.g., whether “taking account of” or “having regard to”, and whether there is a requirement to give reasons for departure from the Commission’s recommendations).

Some sought formal measures to promote transparency, for instance requirements for the Commission’s reports to state information sources, or to clearly separate the roles of science providers and of the Commission in interpreting scientific information to inform its recommendations.

**Analysis**

The Commission has both advisory and monitoring functions, and its reports are intended:

- to make independent, expert advice available to the Government, to inform important climate policy decisions
- to improve the transparency of Government decision-making, equipping Parliament and the public to hold decision-makers to account for decisions about climate action.

The Bill therefore requires all of the Commission’s reports—both its advisory reports and its monitoring reports—to be tabled in Parliament and made publicly available. The Bill does allow some time for the Minister to table the reports: “as soon as practicable, but within 12 weeks”. We consider that 12 weeks is too long for what is essentially a process requirement, and that transparency would be better assured if reports were required to be tabled and published within a shorter time.

The requirements that will apply to the Commission’s annual reports under section 150 of the Crown Entities Act are that—

- the Minister must present the report to the House within 5 working days after the Minister receives the report or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament
- the Commission must publish the report as soon as practicable after it has been presented to the House, but in any case not later than 10 working days after the report is received by the Minister.

We consider that similar requirements should apply to the Commission’s statutory reports, allowing up to 10 working days for tabling and 20 working days for publication.

The Bill also requires the Minister to consider and respond to various of the Commission’s reports. It would be appropriate to align these requirements—

- for the reports which contain specific recommendations, so that they require a public, written response, which gives reasons for any departures from the Commission’s recommendations, and which is tabled in Parliament
- for the reports which need not contain specific recommendations but are regular functions of the Commission, so that they require a public, written response which is tabled in Parliament.
Recommendation
Include in the appropriate parts of the Bill amendments to—

- provide for the transparency and consistency changes listed in the table below:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Recommendation</th>
<th>Relevant sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timely tabling and publication</td>
<td>At the relevant sections of the Bill, provide that—</td>
<td>• New section 5K (reports to Government)</td>
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<td></td>
<td>• the Minister must present a copy of each of the Commission’s reports to the House of Representatives within 10 working days after the Commission provides it or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament</td>
<td>• New section 5P (target review report)</td>
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<td></td>
<td>• the Commission must publish the report as soon as practicable after it has been presented to the House of Representatives, but in any case not later than 20 working days after the report is provided to the Minister</td>
<td>• New section 5X (emissions budget advice)</td>
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<td></td>
<td>• New section 5ZB (review of emissions budget)</td>
<td>• New section 5X (emissions budget)</td>
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<tr>
<td></td>
<td>• New section 5ZE (advice on emissions-reduction plan)</td>
<td>• New section 5ZH (progress reports on emissions reduction)</td>
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<td></td>
<td>• New section 5ZI (review at end of budget period)</td>
<td>• New section 5ZI (review at end of budget period)</td>
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<td></td>
<td>• New section 5ZO (NCCRA) – include in the publication requirement any evidence commissioned to support the assessment’s preparation</td>
<td>• New section 5ZO (NCCRA) – include in the publication requirement any evidence commissioned to support the assessment’s preparation</td>
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<td></td>
<td>• New section 5ZT (progress reports on NAP)</td>
<td>• New section 5ZT (progress reports on NAP)</td>
</tr>
<tr>
<td>Consistency in Government responses</td>
<td>At the relevant sections of the Bill, provide that—</td>
<td>• New section 5R (response to target review) - responds to specific recommendations</td>
</tr>
<tr>
<td></td>
<td>• for reports which contain specific recommendations, the report requires a public, written response, which gives reasons for any departures from the Commission’s recommendations, and which is tabled in Parliament</td>
<td>• New section 5Y (response to advice on emissions budget) - responds to specific recommendations</td>
</tr>
<tr>
<td></td>
<td>• for reports which need not contain specific recommendations but are regular functions of the Commission, the report requires a public, written response which is tabled in Parliament.</td>
<td>• New section 5ZI (response to emissions reduction review report) - responds to specific recommendations</td>
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<td>• New section 5ZF (emissions-reduction plan)</td>
<td>• New section 5ZF (emissions-reduction plan)</td>
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<td></td>
<td>• New section 5ZH (response to progress report on emissions reduction)</td>
<td>• New section 5ZT (response to progress report on NAP)</td>
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<td>• New section 5ZR (NAP)</td>
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<td>• New section 5ZU (response to progress report on NAP)</td>
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</table>

7.3 International aviation and shipping emissions

Submissions
Many NGO submitters considered that New Zealand’s IAS emissions should be brought into the Bill. Concerns raised included:

- That international aviation has a large carbon footprint and the industry is expected to grow
- That the Bill provides no accountability or transparency on how IAS emissions are to be addressed, and that New Zealand delegates this to international fora (the International Civil Aviation Organise (ICAO) and International Maritime Organisation (IMO) to regulate
• Potential inequities and distortions in the treatment of domestic industries and firms that emit in New Zealand compared with domestic firms that emit outside of New Zealand for international travel and tourism, and

• Potential issues around domestic offsets being purchased through the Carbon Offsetting Scheme for International Aviation (CORSIA) scheme (a global measure proposed by the ICAO to meet its goal of carbon-neutral growth from 2020 onwards).

In contrast, some submitters expressed that New Zealand’s reliance on the export and import of goods and the tourism industry are vital for economic prosperity and there are limited abatement tools currently available to reduce aviation emissions.

As an alternative to including IAS emissions in emissions budgets and targets, one submitter proposed amending sections 5ZE and 5ZF to require the Commission and the Minister to consider IAS emissions when preparing emissions reductions plans (without any requirement to reduce those emissions to a particular level). They also suggested a further option of the Minister requesting a report from the Commission on the issue of IAS emissions following enactment of the Bill.

Analysis
We do not recommend including New Zealand’s contribution to IAS emissions within the 2050 target or emissions budgets at this stage, however we consider receiving the Commission’s expert advice on this would be helpful.

Emissions from international shipping and aviation are reported in our GHG inventory, although they are not included in the national totals reported to the UNFCCC. New Zealand’s total domestic gross emissions for 2017 were 80.9 Mt CO2e. If the IAS emissions reported in New Zealand’s inventory were added to the total this would come to 85.5 Mt CO2e, representing 5.7 per cent of this combined total. The calculation of New Zealand’s portion of IAS is based on refuelling undertaken in New Zealand by vessels travelling internationally, but there are also other methods used to account for these emissions.

Emissions associated with IAS and tourism are material and important to consider as part of New Zealand’s climate change strategy. It is important to consider how all sectors of the economy, including tourism, can contribute to climate change mitigation goals in the future.

The reasons we do not recommend including IAS emissions in the 2050 target at present are:

• Most other countries do not include IAS emissions in their national GHG emissions totals and New Zealand plays an active role in negotiating the treatment of these emissions internationally (through the International Civil Aviation Organisation (ICAO) and IMO). It would be a statement of ambition for New Zealand to reduce these emissions but this could have economic and other impacts that have not been quantified.

• The tools for abatement of these emissions may be limited, for instance given that there are international rules around pricing aviation fuels (including potential WTO considerations) which are potentially beyond domestic influence.

• The implications of including IAS emissions were not included in our economic analysis supporting decisions, and were not part of consultation on the Bill. Including these emissions in the target and budgets is likely to make them more difficult to achieve, and could lead to an increased demand for forestry offsets, offshore mitigation, or an additional requirement for emissions reductions in other sectors of the economy. Careful consideration of the implications of their inclusion would be needed before any decisions were made.
A key issue that would need to be resolved prior to a decision to include IAS emissions in the 2050 target is the accounting treatment of these emissions, including consideration of interactions with CORSIA and any other international mechanisms.

It is worth noting that the United Kingdom has acknowledged that these sectors must be part of the whole economy strategy for net zero. It has done this as a statement of ambition after receiving advice from the UK Committee to include IAS emissions in its 2050 net zero emissions target and future emissions budgets.

We consider the Commission should be required to advise on if, and if so how, IAS emissions should be included in the 2050 target and emissions budgets as part of its target review in 2024. In the meantime New Zealand can continue to advise on the best practice transparency and integrity framework that ICAO and IMO operate under. New Zealand businesses can also influence the pace of this leadership (for example through innovation in the use of biofuels).

**Recommendations**

Amend new section 5K with amendments to—

- require the Commission to advise on if, and if so how, emissions from international shipping and aviation should be included in the 2050 target and emissions budgets as part of its target review in 2024.
8 Out of scope matters

This chapter discusses issues raised by submitters that do not relate directly to the Bill, primarily because they are beyond the scope of the proposed Bill or relate to other legislation. The issues discussed include:

- Declaring a climate emergency
- Climate change and human mobility
- Science and research
- Carbon price, carbon tax and carbon credits
- RMA and other legislation
- Other actions Government should be taking (e.g., transport, waste, alternative fuels)

As the above topics extend beyond the framework of the Bill, no specific changes are recommended in relation to these issues.

8.1 Declaring a climate emergency

Submissions

Submitters (including youth and student organisations, iwi/Māori and NGOs) requested that the Government declare a climate emergency and, therefore, reflect the urgency and seriousness of the climate crisis. Submitters felt declaring a climate emergency would set the pace for climate action.

Analysis

A number of councils across New Zealand have recently declared climate emergencies, and some submitters called for the Bill’s purpose to include reference to a climate emergency. While the risks of climate change do need to be addressed with some urgency, the intention of the Bill is to put in place a long-term, stable framework for mitigating and adapting to climate change, so as to facilitate a smooth transition to a climate resilient, low emissions economy. Given the absence of a consistent definition of a ‘climate emergency’, we see risks that introducing this terminology into legislation may lead to interpretative difficulties. While symbolic of a commitment to acting with urgency on climate change, ‘climate emergency’ declarations as made worldwide and by local Government in New Zealand have largely political implications rather than specific legal or financial consequences. The Government is free to make a ‘climate emergency’ declaration on its own initiative, and to define what that means for the Government.

8.2 Climate change and human mobility

Submissions

A number of submissions on the Bill’s adaptation provisions also commented that risks to Pacific neighbours, including the risk that they will need to seek refuge in New Zealand, should be assessed as part of the NCCRA. Adaptation planning should consider how we can assist our Pacific neighbours, both in their countries and as migrants to New Zealand. Some submitters linked their suggestions to manaakitanga and our obligations as host, and New Zealand’s leadership and guardianship role in the Pacific.
Analysis

This matter is beyond the scope of the Bill.

Climate change has begun to force some people in the Pacific to relocate and, without adequate support, this issue will continue to grow. For cultural, family and other reasons, Pacific peoples have repeatedly expressed their very strong desire not to be compelled to leave their homes, their communities, or their countries due to climate change. Therefore, where relocation is necessary, it is highly likely to occur within their individual countries. New Zealand’s aid programme is developing ways to support communities facing relocation risks to adapt to the effects of climate change so that they can remain in their homes and their communities. Where households cannot remain safely where they are, New Zealand will also support communities to relocate within their countries. For the longer-term, we are undertaking research and talking with Pacific Island countries to better understand the risks and how they might be mitigated.

8.3 Science and research

Submissions

Comments on science and research fell into two broad categories. One group of submitters requested that the targets and emissions budgets established under the Bill be based on current science that is relevant to New Zealand’s individual circumstances, either stating or implying flaws in the work of the IPCC. Some submitters went further and said that carbon dioxide and/or methane do not cause warming and do not need to be reduced.

Another group of submitters requested more research into carbon farming, carbon sequestration (e.g., in soils) and other methods to reduce emissions from farming. A range of existing or emerging technologies were promoted as tools for reducing emissions.

Analysis

Addressing either of these categories would require additional science and research, and it is not feasible to do this prior to the Bill’s enactment. However, we consider that the Bill is broad enough to allow consideration of the issues raised. For example, the Bill provides that -

- in performing its functions under the Act, the Commission must consider both current available scientific knowledge and technology that could be efficiently adopted (Clause 5L)
- when advising on and setting emissions budgets and emissions reductions plans, the Commission and Minister must have regard to a broad range of domestic and international scientific advice, and existing technology and anticipated technological developments (Clause 5Z).

8.4 Carbon price, carbon tax and carbon credits

Submissions

A small number of submitters commented on carbon pricing, a carbon tax or carbon credits (not including offshore mitigation). Opinions were mixed. Some submitters (NGOs and businesses) supporting a carbon price that would incentivise change and investment in low-emissions technologies, while others were concerned that a carbon tax/price would hurt farmers and fail to encourage investment (industry). Others considered that a carbon tax/price would not be enough, especially if some groups received a free allocation of units (NGOs).
Submitters (business and industry) also proposed tax credits for things such as research and innovation on-farm or individual actions that reduce emissions and/or have other environmental benefits. Some (NGOs) proposed a redistribution of income from carbon taxes to individuals to help offset costs associated with the transition to a low-emissions economy.

**Analysis**

These issues are out of scope of the current Bill. Any policy or legislative changes relating to these issues would likely need to be considered alongside future amendments to the NZ ETS and/or as part of plans to meet emissions budgets.

**8.5 Resource Management Act and other legislation**

**Submissions**

Submitters expressed concerns around the relationships between, and alignment of, the Bill and other legislation, particularly the RMA. In the words of one submitter:

> At present, the Bill provides generally that targets and budgets are able to be (but do not have to be) considered under other frameworks, but under ss70A and 104E of the RMA (for local Government at least) they explicitly cannot be considered... A meaningful response to climate change is urgent, and legislative impediments to councils addressing mitigation need to be removed... The Resource Management Act needs to be amended to remove the prohibition on local Government considering the impacts of activities on climate change.

Environmental Defence Society

There are also potential issues with adaptation provisions:

> The proposed suite of national adaptation responses have the potential to create uncertain outcomes with existing (and for the most part local) RMA decision-making – Specifically, questions will arise as to what weight they should be given and how they fit with current RMA provisions relating to climate change and natural hazards eg, regarding consenting of subdivision under section 106 RMA.

Resource Management Law Association

Some submitters noted the Government’s comprehensive review of the resource management system but felt that any changes to the RMA as a result of this would be too late and amendments needed to be made now through this Bill.

Other legislation that submitters requested be reviewed to align with the Bill included the LGA, the Exclusive Economic Zone and Continental Shelf Act 2012, the Building Act 2004 and Building Code, and the Land Transport Management Act 2003.

**Analysis**

There is likely scope for the RMA to play a greater role in supporting the transition to a low emissions New Zealand. However, this needs to be considered carefully in the context of the Zero Carbon Bill, and the role of the NZ ETS in limiting New Zealand’s overall emissions. The RMA is unique in its influence of outcomes in the built, energy and transport sectors, and governs much of the local decision-making process. Initial analysis suggest that there is likely a role for the RMA to support emissions reductions...
through facilitating compact urban form. At present, developers face high costs, lengthy appeal processes and restrictive consenting rules. The RMA is a key driver of many barriers to building denser cities.

There may be a further role for regulatory measures under the RMA where it is clear that other policy measures will not deliver emission reductions in line with the Government’s policy objectives. However, due to some of the implications of amending the RMA to allow for emissions considerations, the Government deems it appropriate to do this through the comprehensive review of the resource management system.

Reconsidering the role of the RMA in responding to climate change is a complex issue. If new policy settings are implemented incorrectly, there is a risk of complicating RMA consent decisions at a local level by allowing those dissatisfied with central Government action to resist the many and varied local applications which emit GHG emissions. This could be unfair and costly to councils and applicants, particularly with no national direction yet promulgated under the RMA. Such change has the potential to undermine public confidence in the planning system. The overlap and consistency of the RMA with the Zero Carbon Bill has been confirmed as part of the scope of the comprehensive review. Any repeal of sections 70A and 104E will not be included in the Zero Carbon Bill, but instead should be evaluated and consulted on through this RMA review process.

8.6 Other actions Government should be taking (eg, transport, waste, alternative fuels)

Submissions
Submitters suggested a range of actions that Government and individuals should take to reduce our emissions, adapt to a changing climate and generally reduce our environmental footprint. These included suggestions around:

- electric vehicles and public transport
- recycling and reducing waste
- more plant-based diets
- reducing use of fossil fuels and increasing use of renewable electricity and alternative fuels.

Analysis
Specific actions to reduce emissions and adapt to climate change are out of scope of the Bill. Some of the suggestions offered by submitters are already being considered by the Government, for example as part of the response to the Productivity Commission’s Low Emissions Economy report. Specific actions may also be considered as part of plans to meet emissions budgets.