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Tēnā koe Minister

Thank you for the opportunity to provide the Climate Change Commission's (the Commission) proposals for amendments to improve the operation of the Climate Change Response Act 2002 (the Act).

In our view, the Act establishes an effective institutional framework for Aotearoa New Zealand's transition to a low emissions future. This framework has increased the stability and predictability of the policy environment and supported transparent decision-making using clear processes. In turn, this has helped create the conditions for central and local Government agencies, businesses, and households to make investment choices that contribute to reducing emissions and increasing resilience.

The Commission's cycles of advice give successive Governments useful inputs into decision-making, and our monitoring reports provide governments with independent assessments of their policy plans which support the integrity of the overall climate policy system.

The Commission now has experience delivering all our annual and bi-annual products. Only the first six-yearly national climate change risk assessment and first five-yearly end of emissions budget report are yet to be delivered. The delivery of future reports will build on lessons learned and efficiencies gained over the last five years, while ensuring that new insights and circumstances are considered as appropriate.

Our history working within the Act's framework means we can propose relatively minor and technical improvements that would increase efficiency and efficacy. Many of our proposals could lead to better alignment of the Commission's work within the broader climate change policy system and thus streamline the processes by which the Commission advises the Government.

We have limited our suggestions to technical and procedural matters relating to the Commission's functions. Our recent reports – such as the 2023 advice on the direction of policy for the Government's second emissions reduction plan, 2024 emissions reduction monitoring report, and 2024 national adaptation plan progress report – canvass several broader policy areas which could be addressed through more significant legislative amendments.

Access to information

The usefulness of our advice to the government of the day relies on the Commission having access to a wide range of up-to-date data and information. Section 5ZW of the Act gives the Commission power to request information related to climate change adaptation from public organisations. There is no similar power for the Commission to request information relating to emissions, removals, or actions to reduce emissions.

While we work constructively with many public agencies to obtain relevant information, the lack of a formal power to do so means, at times, it has been challenging to obtain information in a timely manner to inform our advice. Greater power to obtain up-to-date information would enable the Commission to provide more useful advice to the Government.

Such a power would not need to be as widely scoped as the existing section 5ZW. For example, we do not think it would be necessary to require the provision of emissions-related information from Council Controlled Organisations or lifeline utility operators. Public Service departments and agencies, Crown agents and entities, and companies listed in Schedule 4A of the Public Finance Act may, however, hold useful information.

- *Recommendation 1: create a new power to obtain information relating to emissions, removals, and emissions reductions from public organisations, similar to the existing section 5ZW, with appropriate information security safeguards.*

Alignment of emissions monitoring reports

The Act establishes interlinked cycles of reporting progress towards the 2050 target: annual monitoring reports and five-yearly reports no more than two years after the end of emissions budget periods. This means that in some years, the Commission is required to produce two reports that canvass many of the same issues, using much of the same data and inputs, but with different analysis requirements and deadlines.

These reports will next coincide in 2027, with an annual monitoring report due no more than three months after the Greenhouse Gas Inventory is published and an end of emissions budget report due no later than 31 December 2027.

We suggest that in years when an end of emissions budget report is due, the deadline for the annual monitoring report could be relaxed to enable these two reports to be delivered together. This would facilitate a logical and coordinated approach to the reports, increasing their usefulness as inputs to Government decision making.

- *Recommendation 2: amend section 5ZK so that in a year in which an end of emissions budget report is published under section 5ZL, the deadline for the annual emissions monitoring report is 31 December instead of no later than three months following the publication of the Greenhouse Gas Inventory.*

We are also aware of a tension between the timelines for emissions monitoring reports set in the Act, and the current all-of-Government approach to quarterly reporting. Emissions monitoring reports must be delivered within three months of the annual publication of the Greenhouse Gas Inventory. The date the Inventory is published is not fixed.

Relaxing the three-month requirement in the Act to four or five months may enable smoother alignment with quarterly reporting, improving efficiencies across government agencies. However, any delay to the

Commission's annual reports means their underlying data inputs become dated, and so needs to be balanced against the advantages of reporting quickly using the most up to date data available.

- *Recommendation 3: consider the trade-offs involved in relaxing the three-month deadline for the publication of annual emissions reduction monitoring reports.*

Alignment of adaptation plans and progress reports

The cycles of reporting relating to adaptation could be improved to increase the usefulness of these reports.

Section 5ZU(1)(c) requires the Commission to deliver progress reports two, four, and six years after a national adaptation plan is published. The six-year deadline coincides with the deadline for the Government to publish the next national adaptation plan. The effect of this is that the most recent progress report is highly unlikely to be delivered to the Minister in time to feed into the development of the next adaptation plan, and the Commission will have delivered a progress report for a plan that is being superseded.

This issue could be addressed by bringing forward the third progress report in each cycle, either by amending section 5ZU(1)(c) to read "5 years and 6 months after the adaptation plan is made publicly available" or by adding the words "no later than" at the appropriate place in section 5ZU(1).

- *Recommendation 4: amend section 5ZU to encourage or require the third progress report in each six-year cycle to be delivered by the Commission at least six months in advance of the deadline by which the Minister must publish the next national adaptation plan.*

A related issue is that the Act does not set out a process for Governments to substantially amend national adaptation plans in response to the Commission's bi-annual progress assessments or any other events.

Section 5ZI(3) of the Act enables the Minister to amend emissions reduction plans at any time to maintain currency. However, section 5ZT(2) restricts the Minister to only "minor or technical changes" to national adaptation plans. Enabling more significant changes to national adaptation plans could help ensure the plans remain current.

- *Recommendation 5: enable the Minister to amend national adaptation plans to maintain currency, in a manner similar to the Minister's power to amend emissions reduction plans.*

Alignment of decisions relating to NZ ETS settings with the timing of auction events

Each year the Commission provides forward-looking advice on five years' worth of NZ ETS unit supply and price control settings. The Minister then makes decisions for the same five-year period. Settings for the next two years cannot be easily revised, except under exceptional circumstances, while settings for the following three years can be. This provides the market with medium-term predictability.

Section 30GB(5)(a) reflects the principle that if the behaviour of NZ ETS participants has led to price controls being triggered (e.g. the release of the cost containment reserve reflecting unexpectedly high demand at an unexpectedly high price), it may be desirable for the Minister to review the settings for the next two years. However, the practical application of this principle is limited by the phrase "in the year in which the amendment is made."

The Government typically holds four NZ ETS auctions each calendar year. If price controls are triggered in the September or December auctions, the following year's unit supply and price control settings will have

already been set. Such decisions are usually made around August. In this scenario, the Commission may also be prevented from taking the fact that the price controls have been triggered in the September or December auctions into account for its next round of NZ ETS advice which is delivered the following year. The September and December auctions are essentially too late for the Minister to take into account, and too early for the Commission to take into account.

The principle of section 30GB(5)(a) could be more practically given effect by changing the phrase “in the year in which the amendment is made” to “since the last time that the Minister recommended the making of regulations under this section.” This creates a more feasible window of time for the Minister, and the Commission, to consider if the fact price controls were triggered suggests a change to the settings should be made to promote better operation of the market.

- *Recommendation 6: remove the words “in the year in which the amendment is made” in section 30GB(5)(b) and replace it with words to the effect of “since the last time that the Minister recommended the making of regulations under this section.”*

Alignment of NZ ETS settings with Emissions Budgets and Nationally Determined Contributions

Successive Governments have treated the NZ ETS as a key tool to achieve net emissions reductions. To that effect, section 30GC(2)(a) requires that, when setting unit supply and price control levels for the NZ ETS, the Minister must be satisfied that these are in accordance with the emissions budget and Nationally Determined Contribution (NDC) for:

- (i) the period for which the limits or price control settings are being prescribed; or*
- (ii) any period after that, if a budget or contribution exists for that period.*

In the Commission’s view, “or” should read “and”. This change would clarify that future emissions budgets and NDCs can be considered in addition to current budgets and NDCs, rather than instead of them.

- *Recommendation 7: replace “or” with “and” in section 30GC(2)(a)(i).*

Requirements relating to consultation and engagement on emissions reduction plans

The value of the Commission’s advice rests on a good understanding of the full range of stakeholder and community views and experiences, gained by exercising our mandate to consult and engage under section 5N of the Act.

While it is important, frequent broad public consultation can be resource-intensive for the Commission and for respondents. Targeted direct engagement with organisations, businesses, local government, scientists and academics, and communities including iwi Māori often provides us with the richest insights and information to inform our advice. The Commission is working to streamline consultation and engagement so that we have a constant flow of engagement generating insights and information that can be used across all our statutory work.

For most of the Commission’s work, the Act requires proactive engagement with relevant persons and provides discretion about whether to conduct broad public consultation. However, when preparing advice to the Minister on emissions budgets and emissions reduction plans, the Commission is required to undertake public consultation. The Minister is also required to undertake public consultation.¹

¹ Section 5ZC(2)(b)(v) sets out the factors that must be considered when setting emissions budgets including requiring the Commission and the Minister to have regard to “the results of public consultation on an emissions budget”. Section 5ZH(3) carries that requirement over into the process for emissions reduction plans.

While the Commission provides advice on the direction of policy for emissions reduction plans, the plans themselves are a matter for the government of the day to formulate. The responsibility for public consultation on emissions reduction plans could therefore sit solely with the Government, creating flexibility for our advice on emissions reduction plans to be informed by other forms of engagement.

- *Recommendation 8: replace the requirement for the Commission to conduct and consider public consultation on its advice regarding emissions reduction plans with discretion for the Commission to choose other forms of targeted engagement, while retaining the requirement on the Minister to conduct and consider public consultation on emissions reduction plans.*

Predictable work planning

The Commission's forward work plan is largely defined by the reports we are required to deliver to the timelines set out Act. However, significant pieces of unexpected work such as requests for extra advice under section 5K of the Act and costly litigation can create pressure on the Commission's resources if such work is not funded.

Shifting from an annual to a multi-year appropriation could enable more flexible work planning to accommodate unexpected work. However, we are not making a specific recommendation because questions about the most efficient and effective way to resource the Commission are not a matter to consider in the Act itself.

We would be happy to discuss the proposals in this letter with you or Ministry for the Environment officials in more detail. We would also welcome engagement on any other changes to the Act that you may be considering.

Finally, please note that this letter will be published on the Commission's website as is our standard practice.

Ngā mihi nui



Dr Rod Carr

Chair – He Pou a Rangi Climate Change Commission