
Climate Change Response (Zero Carbon) Amendment Bill Released

The Government's most significant legislative response to the climate crisis was released ahead of its first reading in Parliament earlier this week. Taking its lead from the UK's climate change legislation, the bill seeks to provide a framework for developing and implementing climate change policies that will contribute to the international effort to limit the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels.

Utilising the existing emissions trading scheme, the bill proposes the allocation of emissions budgets (issued every five years) designed to enable a "just and fair" transition of New Zealand's industry and economy towards meeting the 2050 target. The target adopts a "split-gas" approach, where by 2050:

- Biogenic methane emissions will have reduced by 24 – 27% below 2017 levels. By 2030, they will have reduced by 10%.
- All other net greenhouse gas emissions will have reduced (through reductions, removals and offshore mitigation) to zero.

Under the bill, the relevant Minister must ensure that net emissions do not exceed the emissions budget for the relevant emissions budget period. Along with setting the budget, the Minister will also be required to prepare an emissions reduction plan which will set out the policies and strategies for meeting such a budget. There is however no legal remedy or relief available for failing to meet an emissions budget or for failing to meet the overall 2050 target, other than the issuing of a declaration and an award of costs. Similarly, meeting the emissions budgets and the 2050 targets are only permissive considerations for those exercising public functions. A failure to take a budget or the 2050 target into account will not invalidate the action. Consequently, as with the UK legislation, much of the success of this legislation will therefore rely on political and industry pressure to achieve compliance with the emissions budgets.

In addition to requiring the preparation of emissions budgets and ensuring that they

(and as a result the 2050 target) are met, the bill would establish the Climate Change Commission. The Commission is an independent Crown entity tasked with both advising the Government on its emissions budgets and reductions and adaptation plans, and monitoring and reporting on progress towards meeting emissions budgets and the 2050 targets. In particular, the Commission will be required to recommend the quantity of emissions permitted for each period, how the budget will be met including pricing and policy methods, and the indicated proportion of reductions, removals and offshore mitigation. While the Minister is not required to accept its advice or recommendations, the Minister is required to present the Commission's reports to the House and issue a public response to that assessment. Critically, the bill is prescriptive in the skillsets required for the Commission which include expertise in climate science, mātauranga Māori and Te Ao Māori, central and local government policy and decision making, and experience from a range of sectors and industries.

As mentioned, the bill anticipates that emissions budgets will be met through some combination of emissions removal (sequestration of some form), reduction and, in limited circumstances, offshore mitigation. Offshore mitigation would allow the purchase of emissions reductions and removals, or allows from international emissions trading schemes. While the use of offshore mitigation is generally discouraged under the bill, the ability to utilise that method provides some further flexibility to both industry and Government in seeking to meet the emissions budgets. Unlike the UK legislation, there is no mention of whether and how New Zealand's contribution to international aviation and shipping emissions will be accounted for, though this may be a matter that is subject to consideration by the Commission once it is established.

Commentary

Informed by extensive public consultation and a range of technical (including environmental and economic) analysis, the bill has of course already attracted a wide ranging response across different sectors. While applauding the framework for action, climate scientists and environmentalists have generally voiced concerns around the absence of enforcement/accountability for failing to meet targets. While similarly applauding the intent, other industries have voiced concerns over how realistic the targets are given the available technology.

From the analysis in support of the bill, it is clear that if the targets are to be reached then significant investment in innovative technologies to support industry towards more carbon neutral operations, and planting of trees (or use of other devices) that effectively sequester carbon will be critical. It is also clear that if the bill passes, there is a great deal of work ahead for particularly the Climate Change Commission in its role as an advisor to, and watchdog of, the Government in its response to the climate crisis. As has been illustrated by the UK Commission, critical success factors for this agency will be strong credibility and influence generated by well-rounded and in-depth expertise (including in policy making, business and industry), independence and transparency. Partnership with Māori at all levels of decision-making will also be vital.

There appears to be strong (albeit not complete) consensus across industry and

political parties alike that taking action to reduce New Zealand's carbon footprint is critical if we are to contribute to the global effort to slow the rate of our changing climate. How extensive that action is, how quickly it can be taken, and of course who pays for it remains to be seen. However this bill provides a strong framework for ambitious decisions to be made – ambitious decisions which will be required if the 2050 target is to be met. The (largely equivalent) UK legislation is highly regarded, having been replicated in a number of other countries. That Commission has been identified as having an excellent reputation, producing reports that carry “immense authority” and influence over Government.

Notwithstanding the absence of any obligation on other facets of Government to consider the Commission's advice, it is clear that both the Commission and the Act itself has influenced policy development across sectors. Reports on the Act have also noted that the planning and reporting obligations on Government and the Commission have added value in “produc[ing] a kind of transparent dialogue that invites political accountability”. Moreover, as a result of the work undertaken by the Commission, Government and industry, the UK has met its first emissions budget and looks set to meet its second and third. It is however acknowledged that “low-hanging fruit” in the early years have made this task more straightforward, and more ambitious, controversial decisions are ahead if the UK is to continue its path of emissions reductions.

The Zero Carbon bill has a way to go before it passes, and we may well see some changes as it moves through the House. With National supporting the bill through its first reading earlier this week, it will now progress to select committee stage where the public will have the opportunity to share its views on the bill.

Our team is following this closely, so please do not hesitate to contact us if you have any questions about the bill. We have also prepared a more detailed summary of how the bill operates and we are more than happy to provide this to you and your team should you wish.

¹. New Zealand Productivity Commission Te Kōwhiri Whai Hua o Aotearoa Note: Examining the UK Climate Change Act – Research Note, Teresea Weeks, September 2017 at p.20.

². Macroy, R. (2014). “The UK Climate Change Act – Towards a Brave New World? (2012)” in Regulation, enforcement and governance in environmental law (2ed), 261-274. Oxford: Hart Publishing, p 267

³. Church, J. (2016). Mind the Gap – Reviving the Climate Change Act. October 2016. London: ClientEarth, p.13.
