



# Submission regarding the Climate Change Response (Zero Carbon) Amendment Bill

16 July 2019

Submission of the Human Rights Commission  
on the Climate Change Response (Zero Carbon)  
Amendment Bill

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**NZ  
Human  
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Human Rights Commission  
Te Kāhui Tikā Tangata

## **INTRODUCTION**

1. The Human Rights Commission ('the Commission') welcomes the opportunity to provide this submission on the Climate Change Response (Zero Carbon) Amendment Bill ('the Bill').
2. The Commission strongly supports the Bill's purpose to give effect to New Zealand's international obligations under the Paris Agreement by providing "a framework through which New Zealand can develop and implement clear and stable climate change policies to contribute efforts to limit the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels."<sup>1</sup>
3. While the Commission supports the Bill, we consider its ability to effectively address the human rights challenges brought about by climate change can be further strengthened by:
  - a. Including within its policy framework under clauses 4 and 8, explicit reference to the Government's obligations under Te Tiriti o Waitangi and human rights treaty obligations; and
  - b. Increasing its leverage in respect of future policy development and budgetary processes.
4. Climate change poses considerable challenges for human rights, both in New Zealand and globally. Rising temperatures, changing weather patterns and increased sea levels will inevitably impact on living standards, public health outcomes and economic and social stability.
5. The Commission considers that the Bill will significantly enhance New Zealand's current institutional capacity to address climate change. The Bill establishes a new independent advisory and monitoring entity, the Climate Change Commission which will monitor and report on emissions budgets set by the Minister for Climate Change.
6. The Climate Change Commission will also issue periodic climate change risk assessment reports which will be presented to both the House and the Minister. The risk assessments reports will inform the national adaptation plan prepared by the Minister as a strategic government response to the risks identified and prioritised by the Commission. This establishes a policy framework designed to drive emissions budgetary planning and related public policy development towards the 2050 target set under the Paris Agreement.
7. In addition, the risk assessment and resulting national adaptation plans also provide for consideration of the wider social, economic and cultural implications of climate change on communities, families and whanau in New Zealand, particularly those who are most vulnerable. From a human rights perspective, this is fundamentally important.
8. Our submission accordingly makes several recommendations for the Committee's

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<sup>1</sup> Climate Change Response (Zero Carbon) Amendment Bill, Explanatory Note

consideration. A summary of our recommendations is set out in the Appendix to the submission.

## **CLIMATE CHANGE AND HUMAN RIGHTS**

9. Climate change is a human rights issue. As emphasised by the United Nations Human Rights Council in a 2011 resolution: “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights.”<sup>2</sup> These include the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination, and human rights obligations relating to access to safe drinking water and sanitation.<sup>3</sup>
10. The UN Special Rapporteur on Extreme Poverty and Human Rights highlighted that climate change threatens the future of human rights and risks undoing the last fifty years of progress in development, global health, and poverty reduction.<sup>4</sup> It is therefore critical to apply a human rights-based approach to guide policy measures designed to address climate change.
11. It has been recognised that the effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability.<sup>5</sup>
12. Populations living in areas that are particularly prone to climate change face greater levels of uncertainty and social disruption. These social stressors heighten the risk of community discontent, growing inequality and greater levels of deprivation among some groups which can lead to nationalist, xenophobic, racist and other responses.<sup>6</sup> For these reasons, maintaining a strong commitment to human rights is essential in climate change response.<sup>7</sup>
13. Climate change intersects with New Zealand’s international obligations under several human rights treaties. These include the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).

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<sup>2</sup> Human Rights Council, “18/... Human rights and climate change”, 26 September 2011, A/HRC/18/L.26 at preamble

<sup>3</sup> *Ibid*

<sup>4</sup> Human Rights Council, “Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights”, 25 June 2019, A/HRC/41/39 at [13]

<sup>5</sup> Human Rights Council, “18/... Human rights and climate change” 26 September 2011, A/HRC/18/L.26 at preamble

<sup>6</sup> Human Rights Council, “Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights”, 25 June 2019, A/HRC/41/39 at [65]-[66]

<sup>7</sup> *Ibid*

14. The preamble to the Paris Agreement acknowledges the need for human rights obligations to be considered when addressing climate change:

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.*

The legislation setting up the framework for policy to address climate change must ensure adequate consideration and protection of human rights.

15. The Commission also wishes to draw the Select Committee's attention to the New Zealand Government response to the third cycle of the Universal Periodic Review.<sup>8</sup> The New Zealand Government agreed to adopt a procedure so that in the future any law or legislative reform is subject to prior analysis of its impact on human rights.<sup>9</sup> Further to this commitment, the Climate Change Response (Zero Carbon) Amendment Bill which establishes the framework for future climate change policy should include explicit consideration of international human rights law obligations.
16. Human rights obligations, standards and principles have the potential to inform and strengthen policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.<sup>10</sup>
17. **The Commission accordingly recommends that the Select Committee makes the following amendments to the Bill:**
- a) Amend clause 4 to introduce new section 3(ab) to provide that the framework addresses the effects of climate change on human rights, including its economic, social, health, environmental, ecological, and cultural impacts**
  - b) Amend clause 8 (new section 5H) to add human rights knowledge and expertise to the matters the Minister must have regard to in recommending appointment of members to the Climate Change Commission**
  - c) Amend clause 8 (new section 5L) to add the *impacts on human rights* to the matters the Commission must consider in performing its functions and duties**

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<sup>8</sup> Human Rights Council, "Report of the Working Group on the Universal Periodic Review: New Zealand, Addendum – Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", 17 June 2019, A/HRC/41/4/Add.1

<sup>9</sup> Recommendation 6.35

<sup>10</sup> Human Rights Council, "18/... Human rights and climate change", 26 September 2011, A/HRC/18/L.26 at preamble

- d) Amend clause 8 (new section 5Z) to add *the impact on human rights to the matters relevant to advising on, and setting, emissions budgets*
- e) Amend clause 8 (new section 5ZN(2)(c)) to provide that the national climate change risk assessment should explicitly include consideration of the impact on New Zealand’s relevant obligations under international agreements, *including human rights treaties and the UN Sustainable Development Agenda*
- f) Amend clause 8 (new section 5ZQ(4)(c)) to provide that the development of the national adaptation plan take into account the impact of climate change on New Zealand’s relevant obligations under international agreements, *including human rights treaties and the UN Sustainable Development Agenda*

**TE TIRITI O WAITANGI AND OBLIGATIONS UNDER THE UNITED NATIONS DECLARATION OF INDIGENOUS PEOPLES**

18. Māori have a unique relationship with the natural environment given their role as kaitiaki (guardians). The relationship Māori share with the environment cannot be overstated and is reflected through whakapapa, ancestral place names and tribal histories.<sup>11</sup> The bond with Papatuanuku (Earth Mother) is a strong spiritual and cultural bond that provides identity and sustains all life. Māori consider the land, soil and water as taonga (treasures). Given this relationship between Māori and the environment, a number of te Tiriti o Waitangi principles are relevant in discussions of climate change, including:

- a. Partnership
- b. Māori rangatiratanga over resources and taonga
- c. Participation and duty to consult
- d. Duty of active protection
- e. Equity

19. Partnership is crucial for Māori to give expression to tino rangatiratanga (self-determination) over their resources and taonga, as protected under Article 2 of te Tiriti and Article 3 of the United Nations Declaration of Indigenous Peoples (UNDRIP). The right to the conservation and protection of the environment and productive capacity of lands and resources is protected under Article 29 of the UNDRIP.

20. For genuine partnership to be realised, it is important that Māori are actively involved and participate in setting priorities about climate change and in the decision-making

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<sup>11</sup> Ministry for the Environment, “Consultation with Māori on Climate Change: Hui Report”, November 2007, <https://www.mfe.govt.nz/sites/default/files/consultation-maori-hui-report-nov07.pdf> at 19

processes.<sup>12</sup> Māori should be empowered to drive forward the changes needed. There is a need to embed Māori values and perspectives fully into decision-making. This requires effective, culturally competent communication so that whānau and communities are fully informed; actively listening and involving communities in planning and development; and obtaining a mandate before decisions go ahead. The right to participation is a right inherent in te Tiriti and is protected under Article 19 of the UNDRIP.

21. Under the UNDRIP, indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their lands, territories, waters, coastal seas and other resources.<sup>13</sup> Because of the special connection Māori have to New Zealand's environment, the Crown has a duty to actively protect Māori rights and interests affected by climate change.
22. Not only does upholding of Kaitiakitangi (guardianship) rights and responsibilities to the environment adhere to Te Tiriti obligations, the approach also has the potential to provide solutions to the challenge climate change presents. Natural resource management has long been embedded in Māori culture and worldview. There is a wealth of traditional ecological knowledge that can add significant value to climate change policy.
23. The principle of equity is also of central importance. The 2018 stocktake report of government policy by the Climate Change Adaptation Technical Working Group, administered by the Ministry for the Environment, has found that Māori communities are particularly vulnerable and disproportionately affected by the adverse impacts of climate change and have less capacity to adapt because:
  - a. there is heavy reliance on Māori land and the natural world as the cornerstone of cultural, social and economic frameworks
  - b. impacts are felt more widely in less resilient communities due to lower socio-economic conditions in many areas
  - c. significant changes in natural cultural indicators affect Mātauranga Māori.<sup>14</sup>
24. Further, many Māori cultural heritage sites and access to kai moana are located in coastal low-lying lands which are deeply connected with Māori identity. Rising sea levels affect coastal communities and seasonal weather patterns disrupt food systems and resources relied on by Māori communities.
25. In light of the above, the Commission commends the proposed amendments to section 3A to recognise and respect the Crown's responsibility to give effect to the principles of the te Tiriti. In particular, the Commission welcomes the seeking of

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<sup>12</sup> A right also protected under Article 18 of the UNDRIP which states: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions

<sup>13</sup> Article 25

<sup>14</sup> Climate Change Adaptation Technical Working Group, "Adapting to Climate Change in New Zealand", May 2018, <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/ccatwg-report-web.pdf> at 52

nominations from iwi and Māori representative originations for Commission appointments, the consideration of experience relevant to te Tiriti and te ao Māori when appointing Commission members and the consideration of the impacts on iwi and Māori in the emissions reduction plan and national adaptation plan along with consultation of iwi and Māori in the emissions reduction plan.

26. At a broader level, we note the Government's development of a National Plan of Action on the UNDRIP, co-ordinated by Te Puni Kokiri. Given this commitment, the Commission suggests that the Bill can be further aligned with the principles of te Tiriti and the UNDRIP by making the following amendments to the Bill's purposive and operational clauses.

**27. The Commission recommends that the Committee:**

- a) Amends clause 4 to introduces new section 3(ac) to provide that a purpose of the Act is to ensure that the principles of te Tiriti and the UNDRIP are fully reflected in the development of the framework**
- b) Amends clause 8 (new section 5L) to add te Tiriti obligations to the matters the Commission must consider in performing its functions and duties**
- c) Amends clause 8 (new section 5Z) to add te Tiriti obligations to the matters relevant to advising on, and setting, emissions budgets**
- d) Amends clause 8 (new section 5ZN) to include the impact of climate change on Maori and iwi within the suite of risk assessment considerations**
- e) Amends clause 8 (new section 5ZQ) to include consultation with Maori and iwi in the development of the national adaptation plan**

## **CLIMATE CHANGE AND THE RIGHT TO HEALTH**

28. The impact of climate change on health is increasingly evident.<sup>15</sup> Temperature increases, increased sea levels, extreme weather events and greenhouse gas emissions pose threats to pre-determinants of health: safe drinking water, sufficient food, air quality, available sanitation services, secure shelter, changing patterns of infectious disease and mental/psychological stress.<sup>16</sup> Thus climate change is inextricably linked to the right to the highest attainable standard of health which is

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<sup>15</sup> Margaux J Hall "Advancing Climate Justice and the Right to Health Through Procedural Rights" (2014) 16/1 Health and Human Rights Journal 8 at 9, available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/06/Hall2.pdf>

<sup>16</sup> Intergovernmental Panel on Climate Change, "2013: Summary for Policymakers" in (eds) TF Stocker et al *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, Cambridge, 2013) available at [https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5\\_SPM\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_SPM_FINAL.pdf); Margaux J Hall "Advancing Climate Justice and the Right to Health Through Procedural Rights" (2014) 16/1 Health and Human Rights Journal 8 available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/06/Hall2.pdf>

protected under Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966.<sup>17</sup>

29. The State is required to take progressive steps, to the limit of its available resources, to ensure the highest possible standard of physical and mental health for its population.<sup>18</sup> It must do so in a non-discriminatory and transparent manner.
30. Vulnerability to the health effects of climate change varies considerably between different populations.<sup>19</sup> Vulnerability is influenced by demographics including socioeconomic status, geographic location, background burden of climate-related health conditions, health system capability and capacity to adapt.<sup>20</sup>
31. Population groups such as migrants, persons with disabilities, indigenous peoples, women and children are particularly vulnerable to the health impacts of climate change. This has been recognised by various international bodies. For example, the Committee on the Rights of the Child has recognised that climate change poses one of the “biggest threats” to child health and exacerbates inequalities.<sup>21</sup>
32. It follows that climate change has the potential to worsen current inequalities in health outcomes between different genders, generations, ethnic and socioeconomic groups in New Zealand.<sup>22</sup> Māori currently experience inequalities in health, as reported in the recent Waitangi Tribunal report *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*,<sup>23</sup> and these inequalities are likely to be compounded by climate change. This includes indirect impacts. For example, it has been observed that climate change is likely to have a detrimental effect on the economic determinants of health for Māori, due to the proportion of the Māori economy currently invested in primary industries that are sensitive to climate change.<sup>24</sup>
33. It has also been observed that, if left unchecked, climate change is incompatible with the progressive realisation of the right to health under Article 12. Accordingly, there is an urgent need for research, policies and tools that can assess the impact of climate change on the right to health equity.<sup>25</sup> This is a matter of current concern. The Climate

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<sup>17</sup> And other treaties

<sup>18</sup> See World Health Organisation Fact Sheet, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

<sup>19</sup> R Jones et al, “Climate Change and the Right to Health for Māori in Aotearoa/New Zealand” (2014) 16 Health and Human Rights 54, available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/06/Jones2.pdf> at 55

<sup>20</sup> *Ibid*

<sup>21</sup> UN Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), available at <https://www.refworld.org/docid/51ef9e134.html>

<sup>22</sup> Ministry of Health “New Zealand Burden of Diseases, Injuries and Risk Factors Study” 4 August 2016, <https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/new-zealand-burden-diseases-injuries-and-risk-factors-study>

<sup>23</sup> Waitangi Tribunal Report Wai 2575 “Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry: Pre-Publication Version”, July 2019, [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_150429818/Hauora%20Pre-PubW.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_150429818/Hauora%20Pre-PubW.pdf)

<sup>24</sup> R Jones et al, “Climate Change and the Right to Health for Māori in Aotearoa/New Zealand” (2014) 16 Health and Human Rights 54, available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/06/Jones2.pdf> at 56

<sup>25</sup> R Jones et al, “Climate Change and the Right to Health for Māori in Aotearoa/New Zealand” (2014) 16 Health and Human Rights 54 <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/06/Jones2.pdf>



Change Adaptation Technical Working Group identified climate change as posing significant risks for public health.<sup>26</sup>

34. The Commission notes that the Bill currently provides that both the Climate Change Commission and the Minister for Climate Change must take into account the effects of climate change on health as part of their planning and reporting functions.<sup>27</sup> However, it is not clear as to how this will formally link to health sector planning.
35. We note that in its 2016 review of New Zealand under the UN Convention on the Rights of the Child, the UN Child Rights Committee recommended that the Government “routinely undertake health impact assessments, with particular attention to children, to inform legislation and policies related to climate change”.<sup>28</sup>
36. In light of the above, the Committee may wish to enquire with the Ministry of Health as to how the impact of climate change is currently factored in to public health planning processes and operational practices.

### **CLIMATE CHANGE, THE VULNERABLE AND THE IMPORTANCE OF ECONOMIC AND SOCIAL RIGHTS**

37. As noted above in paragraphs 10-13, United Nations institutions have recognized that climate change is likely to have disproportionate impacts on vulnerable populations. This indicates a need for proactive strengthening of economic and social rights in climate change response.
38. A United Nations Human Rights Council resolution expressed concern that the effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status and disability.<sup>29</sup> The Paris Agreement also reinforces the relationship between climate change and poverty by:

*Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty<sup>30</sup>*

39. The UN Special Rapporteur on Extreme Poverty and Human Rights recently reported that climate change will have devastating consequences for people in poverty and exacerbate inequality.<sup>31</sup> He further emphasised the importance of including economic and social rights in climate change policy in order to reduce the impact of climate

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<sup>26</sup> Adapting to Climate Change in New Zealand, Stocktake Report from the Climate Change Adaptation Technical Working Group, p. 11 <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/ccatwg-report-web.pdf>

<sup>27</sup> Clauses 5ZN and 5ZQ

<sup>28</sup> Convention on the Rights of the Child, “Committee on the Rights of the Child: Concluding observations on the fifth periodic report of New Zealand”, C/CRC/NZL/CO/5, 21 October 2016 at [34(b)]

<sup>29</sup> Human Rights Council, “18/... Human rights and climate change”, 26 September 2011, A/HRC/18/L.26 at preamble

<sup>30</sup> Paris Principles, Preamble; see also Article 2

<sup>31</sup> Human Rights Council, “Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights”, 25 June 2019, A/HRC/41/39

change on those in poverty:

*[67] As people's access to food, land, water, health care, housing, and education are threatened or destroyed, there will be an ever-greater need for principled policies that ensure respect for economic and social rights. The sorts of transformational policies called for, with the concomitant need for a more equal distribution of resources and the satisfaction of essential needs, will also demand much more systematic engagement with these rights than most governments or human rights groups have so far considered. Coping with the unavoidably dramatic impacts of climate change will be much harder if people's economic and social rights are not protected. This applies doubly in the case of those living in poverty whose plight is almost certain to be greatly exacerbated. There is a strong case for advance planning and strategizing around these challenges, but very little evidence that it is being undertaken.*

40. The consequential impact of measures aimed at addressing climate change must be considered to ensure they do not lead to disproportionate impacts upon the most vulnerable. For example, effective increases in the cost of carbon generally flow through into higher costs for goods and services which place particular burdens on those with the lowest disposable incomes.
41. The climate change response must provide an equitable framework that guarantees that the approaches and responses to climate change are equal and inclusive and should reflect, value and support people of all ages, sex, sexual orientation, gender identity, ability, religion, race, colour and ethnicity.<sup>32</sup> Consideration of economic and social rights such as the right to adequate housing, food and water, work, social security, health and education is essential in any climate change policy.
42. It is notable that the national risk assessments<sup>33</sup> and adaptation plans<sup>34</sup> to be issued respectively by the Climate Change Commission and the Minister require an assessment of the economic, social, health and cultural effects of climate change as well as the distribution of its effects, taking particular account of its impacts on vulnerable populations.
43. It follows that consideration of the impacts of climate change on economic, social and cultural rights, pursuant to New Zealand's obligations under ICESCR, will be directly relevant to the development of the climate change policy framework brought about by the national risk assessment and adaptation plans. This further supports the inclusion of explicit reference to international human rights obligations in the Bill.

## **SUSTAINABLE DEVELOPMENT GOALS**

44. The New Zealand government has endorsed and committed to meet goals and targets of the United Nations 2030 Sustainable Development Agenda. The agenda is

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<sup>32</sup> Universal Declaration of Human Rights, Article 2

<sup>33</sup> New section 5ZN(2)(a)-(b)

<sup>34</sup> New section 5ZQ(4)

supported by 17 globally agreed goals (the SDGs), each supported by detailed targets and indicators. The SDGs cover a broad range of human rights concerns including reducing poverty and inequality, improving health and labour market outcomes and addressing environmental challenges, such as climate change.<sup>35</sup>

45. SDG Goal 13 requires that states take urgent action to combat climate change and its impacts. Specific targets relevant to a framework for climate change policy in New Zealand include:

- 13.1 to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries
- 13.2 Integrate climate change measures into national policies, strategies and planning
- 13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning

46. The Bill is a step towards meeting these above SDG Goals, in particular Goals 13.2 and 13.3. While the Government is yet to develop a strategy to implement the SDGs, it has begun to establish processes for monitoring and reporting its progress towards meeting the targets. This year, the Government has issued its first Voluntary National Review (VNR) under the SDGs to the UN Economic and Social Council High Level Political Forum. The VNR contains reference to this Bill and the establishment of the Climate Change Commission, which is described as “supporting the pursuit of Goal 13”.<sup>36</sup>

47. Given the inter-relatedness of climate change and sustainable economic and social development, we reiterate our recommendation that new section 5ZQ(4) of the Bill is amended to require that, in preparing the national adaptation plan, the Minister takes into account New Zealand’s relevant obligations under the UN Sustainable Development Agenda.

## **CLIMATE CHANGE AND THE POLICY AND BUDGET PROCESS**

48. One of the objectives of the Bill and its framework is to hold government to account in pursuit of its goals to reduce emissions by 2050 and “achieve a climate resilient future”.<sup>37</sup>

49. Alongside the national adaptation plan process, the Bill provides that the Minister may issue information requests to a wide range of public organisations, including local

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<sup>35</sup> United Nations Sustainable Development Goals, The Sustainable Development Agenda, undated, <https://www.un.org/sustainabledevelopment/development-agenda-retired/>

<sup>36</sup> New Zealand Government, New Zealand’s Progress Towards the SDGs – 2019, July 2019, <https://www.mfat.govt.nz/assets/Uploads/New-Zealand-Voluntary-National-Review-2019-Final.pdf>, at 91

<sup>37</sup> New Zealand Government, New Zealand’s Progress Towards the SDGs – 2019, July 2019, <https://www.mfat.govt.nz/assets/Uploads/New-Zealand-Voluntary-National-Review-2019-Final.pdf>, at 91

authorities and state-owned enterprises, that require them to provide, among other things, assessments of the current and future effects of climate change on their functions and a statement of their related proposals, policies, targets and timeframes.<sup>38</sup>

50. The Commission supports the Bill's linking of climate change policy to the operation of the broader public sector. However, we consider that it lacks leverage in some respects. Most fundamentally, it does not require public organisations to take into account either the 2050 target nor the Minister's emissions budget<sup>39</sup> when exercising or performing their functions. These factors are merely "permissive considerations" and the Minister may only issue "guidance" on how they may be incorporated into departmental policy and practice.<sup>40</sup>
51. We are concerned that legislating the Paris targets and the emissions budget as "permissive considerations" may have the effect of reducing overall government (and broader public sector) accountability. We consider that their status should ideally be more akin to mandatory relevant considerations, pursuant to administrative law principles<sup>41</sup>. This is likely to be a more effective and appropriate legal standard for ensuring accountability (and render the Court's declaratory jurisdiction under s 5ZJ a more effective remedial option).
52. **We accordingly recommend that the Committee amend clause 8 (new section 5ZK(1)) to provide that the 2050 target and emissions budgets are mandatory relevant considerations.**
53. Another way of increasing the Bill's leverage could be to expressly include the objectives set out in the national adaptation plan within the Wellbeing Outlook component of the Government's annual Budget Policy Statement.<sup>42</sup> There is currently synergy between the objectives of this Bill and the current priorities expressed within the Wellbeing Outlook, one of which is:
- "Creating opportunities for productive businesses, regions, iwi and others to transition to a **sustainable and low-emissions economy**"<sup>43</sup> [emphasis added]*
54. The "well-being" approach to budget process is underpinned by Treasury's Living Standards Framework (LSF) which includes consideration of "natural capital" alongside social, human and financial physical capital.<sup>44</sup> It follows that there is a present opportunity to align the objectives of this Bill with the new budgetary methodology introduced by the LSF and the well-being budget. The proposed reform of the Public Finance Act 1989 to embed the well-being approach provides a

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<sup>38</sup> Clause 5ZV

<sup>39</sup> Clause 5ZK

<sup>40</sup> Clause 5ZL

<sup>41</sup> Joseph P, *Constitutional and Administrative Law in New Zealand* (4<sup>th</sup> ed) at 23.3.2

<sup>42</sup> Issued pursuant to section 26M of the Public Finance Act

<sup>43</sup> The Treasury, Budget Policy Statement 2019, 13 December 2018, <https://treasury.govt.nz/publications/budget-policy-statement/budget-policy-statement-2019-html>

<sup>44</sup> The Treasury, Our living standards framework, 4 December 2018, <https://treasury.govt.nz/information-and-services/nz-economy/living-standards/our-living-standards-framework> at 37-41

particularly important opportunity in this respect.

55. **We therefore recommend that the Committee seek advice from Treasury as to how the Bill's framework may be best aligned with LSF and the prospective reform of the Public Finance Act 1989 to embed the well-being approach.**

## APPENDIX

The Commission recommends that the Select Committee makes the following amendments to the Bill:

- a) Amend clause 4 to introduce new section 3(ab) to provide that the framework addresses the effects of climate change on human rights, including its economic, social, health, environmental, ecological, and cultural impacts.
- b) Amend clause 4 to introduces new section 3(ac) to provide that a purpose of the Act is to ensure that the principles of te Tiriti and the UNDRIP are fully reflected in the development of the framework.
- c) Amend clause 8 (new section 5H) to add human rights knowledge and expertise to the matters the Minister must have regard to in recommending appointment of members to the Climate Change Commission.
- d) Amend clause 8 (new section 5L) to add the *impacts on human rights* to the matters the Commission must consider in performing its functions and duties.
- e) Amend clause 8 (new section 5Z) to add *the impact on human rights* to the matters relevant to advising on, and setting, emissions budgets
- f) Amend clause 8 (new section 5ZN(2)(c)) to provide that the national climate change risk assessment should explicitly include consideration of the impact on New Zealand's relevant obligations under international agreements, *including human rights treaties and the UN Sustainable Development Agenda*.
- g) Amend clause 8 (new section 5ZQ(4)(c)) to provide that the development of the national adaptation plan take into account the impact of climate change on New Zealand's relevant obligations under international agreements, *including human rights treaties and the UN Sustainable Development Agenda*.
- h) Amend clause 8 (new section 5L) to add te Tiriti obligations to the matters the Commission must consider in performing its functions and duties.
- i) Amend clause 8 (new section 5Z) to add te Tiriti obligations to the matters relevant to advising on, and setting, emissions budgets.
- j) Amend clause 8 (new section 5ZN) to include the impact of climate change on Maori and iwi within the suite of risk assessment considerations.
- k) Amend clause 8 (new section 5ZQ) to include consultation with Maori and iwi in the development of the national adaptation plan.
- l) Amend clause 8 (new section 5ZK(1)) to provide that the 2050 target and emissions budgets are mandatory relevant considerations.
- m) Seek advice from Treasury as to how the Bill's framework may be best aligned with LSF and the prospective reform of the Public Finance Act 1989 to embed the well-being approach.