



Climate Change Response (Zero Carbon) Amendment Act 2019

Public Act 2019 No 61
Date of assent 13 November 2019
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Climate Change Response (Zero Carbon) Amendment Act 2019.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Climate Change Response Act 2002 (the **principal Act**).

Part 1

Climate Change Commission, emission reduction, and adaptation

4 Section 3 amended (Purpose)

Before section 3(1)(a), insert:

- (aa) provide a framework by which New Zealand can develop and implement clear and stable climate change policies that—
 - (i) contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and
 - (ii) allow New Zealand to prepare for, and adapt to, the effects of climate change:

5 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

After section 3A(a), insert:

- (ab) with respect to section 5G (which relates to nominations for the Climate Change Commission), particular attention is required to seeking nominations from iwi and Māori representative organisations:
- (ac) with respect to section 5H (which relates to appointments of members of the Commission), the Minister must, before recommending the appointment of a member to the Commission, 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 (Te Tiriti o Waitangi):

- (ad) with respect to sections 5ZG and 5ZI (which require the Minister to prepare and publish an emissions reduction plan), the Minister must include in a emissions reduction plan 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:
- (ae) with respect to section 5ZS (which requires the Minister to prepare a national adaptation plan), the Minister must, in preparing a plan, take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori:

6 Section 4 amended (Interpretation)

- (1) In section 4(1), insert in their appropriate alphabetical order:

2050 target means the emissions reduction target set in section 5Q

biogenic methane means all methane greenhouse gases produced from the agriculture and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)

Climate Change Commission and **Commission** mean the Climate Change Commission established under section 5A

emissions budget means the quantity of emissions that will be permitted in each emissions budget period as a net amount of carbon dioxide equivalent

emissions budget period means a 5-year period for the years 2022 to 2050, as specified in section 5X(3) (except that the period 2022 to 2025 is a 4-year period)

emissions reduction plan means a plan for achieving an emissions budget prepared in accordance with sections 5ZG to 5ZI

gross emissions means New Zealand's total emissions from the agriculture, energy, industrial processes and product use, and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)

net accounting emissions means the total of gross emissions and emissions from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory), less—

- (a) removals, including from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory); and
- (b) offshore mitigation

New Zealand Greenhouse Gas Inventory means the annual inventory report under Articles 4 and 12 of the Convention and Article 7.1 of the Protocol, prepared in accordance with section 32(1)

offshore mitigation means emissions reductions and removals, or allowances from emissions trading schemes,—

- (a) that originate from outside New Zealand; and
- (b) that are expressed as a quantity of carbon dioxide equivalent; and
- (c) that are robustly accounted for to ensure that, among other things, double counting is avoided; and
- (d) that either—
 - (i) represent an actual additional, measurable, and verifiable reduction or removal of an amount of carbon dioxide equivalent; or
 - (ii) are an emissions trading scheme allowance that triggers the reduction of carbon dioxide equivalent

Paris Agreement means the agreement adopted in Paris on 12 December 2015, and includes any amendments that are, or will become, binding on New Zealand from time to time

publicly available, in relation to a document or information, means that the document or information is available at all reasonable times, free of charge, on an Internet site

- (2) In section 4(1), replace the definition of **emissions** with:

emissions,—

- (a) in relation to Parts 1A and 1B, means emissions of greenhouse gases; but
- (b) in relation to an activity listed in Schedule 3 or 4, means carbon dioxide equivalent emissions of greenhouse gases from the activity

- (3) In section 4(1), replace the definition of **removals** with:

removals,—

- (a) in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—
 - (i) removed from the atmosphere; or
 - (ii) not released into the atmosphere; or
 - (iii) a reduction from emissions reported in—
 - (A) New Zealand’s annual inventory report under section 32 as required under the Convention or Protocol for any year; or
 - (B) any emissions report from New Zealand under a successor international agreement; and
- (b) in Part 1B and the definitions of net accounting emissions and offshore mitigation, means greenhouse gases that are removed from the atmosphere

7 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

8 New Parts 1A to 1C inserted

After section 5, insert:

Part 1A
Climate Change Commission

Subpart 1—Establishment and appointments

5A Climate Change Commission established

The Climate Change Commission is established.

5B Purposes of Commission

The purposes of the Commission are—

- (a) to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and
- (b) to monitor and review the Government's progress towards its emissions reduction and adaptation goals.

5C Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to, and in relation to, the Commission except to the extent that this Act expressly provides otherwise.

5D Membership of Commission

- (1) The Commission consists of—
 - (a) a Chairperson;
 - (b) a Deputy Chairperson;
 - (c) 5 other members.
- (2) The members of the Commission are a board for the purposes of the Crown Entities Act 2004.

5E Process for appointment of members of Commission

- (1) The Minister may recommend to the Governor-General that a person be appointed a member of the Commission if—
 - (a) the person has been nominated by the nominating committee; and
 - (b) the Minister has had regard to the matters in section 5H; and
 - (c) the Minister has consulted representatives of all political parties in Parliament.
- (2) The Minister may, at any time, recommend to the Governor-General that a current member of the Commission be appointed to the position of Chairperson or Deputy Chairperson of the Commission.

5F Establishment and membership of nominating committee

- (1) The Minister must establish a committee to nominate candidates to the Minister for appointment as members of the Commission.
- (2) The nominating committee must comprise—
 - (a) the Chairperson of the Commission; and
 - (b) 4 or more other people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.
- (3) If the position of Chairperson is vacant, the nominating committee must comprise 5 or more people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.

5G Role of nominating committee

- (1) On request of the Minister, the nominating committee must nominate 1 or more people who, in the opinion of the committee, are suitably qualified to be appointed to be members of the Commission.
- (2) Before nominating a person for appointment, the nominating committee must—
 - (a) publicly call for expressions of interest in being appointed; and
 - (b) consult any person or group who may have an interest in being a member of the Commission, including—
 - (i) iwi and Māori representative organisations; and
 - (ii) any person or group that the Minister has identified as having an interest.

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

- (1) Before recommending the appointment of a member of the Commission, the Minister must have regard to the need for the Commission to have members who, collectively, have—

- (a) an understanding of climate change mitigation and adaptation, including the likely effects of any responses to climate change; and
- (b) experience working in or with local and central government; and
- (c) knowledge of the process by which public and regulatory policy is formed and given effect to; and
- (d) technical and professional skills, experience, and expertise in, and an understanding of innovative approaches relevant to,—
 - (i) the environmental, ecological, social, economic, and distributional effects of climate change and climate change policy interventions; and
 - (ii) the Treaty of Waitangi (Te Tiriti o Waitangi) and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity); and
 - (iii) a range of sectors and industries, at regional and local levels.

(2) In this section,—

mātauranga Māori means traditional Māori knowledge

te ao Māori means the Māori world

te reo Māori means the Māori language

tikanga Māori means Māori custom and protocol.

5I Members' term of office

In recommending the appointment of a member of the Commission, the Minister must recommend a term of office that ensures that no more than 2 members have their terms of office expire in any calendar year.

Subpart 2—Commission's functions, duties, and powers

5J Commission's functions

The functions of the Commission are—

- (a) to review the 2050 target and, if necessary, recommend changes to the target (*see* sections 5R to 5T);
- (b) to provide advice to the Minister to enable the preparation of emissions budgets (*see* section 5ZA);
- (c) to recommend any necessary amendments to emissions budgets (*see* section 5ZE);
- (d) to provide advice to the Minister about the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods (*see* section 5ZF);
- (e) to provide advice to the Minister to enable the preparation of an emissions reduction plan (*see* section 5ZH):

- (f) to monitor and report on progress towards meeting emissions budgets and the 2050 target (*see* sections 5ZJ to 5ZL):
- (g) to prepare national climate change risk assessments (*see* section 5ZQ):
- (h) to prepare reports on the implementation of the national adaptation plan (*see* section 5ZU):
- (i) to provide other reports requested by the Minister (*see* section 5K).

5K Reports to Government

- (1) The Minister may, at any time, request that the Commission prepare reports to the Government on matters related to reducing emissions of greenhouse gases and adapting to the effects of climate change.
- (2) Before making a request, the Minister must consult the Commission about the terms of reference for the requested report, which may, without limitation, specify—
 - (a) the scope of the report; and
 - (b) requirements concerning consultation; and
 - (c) matters relating to the Commission working jointly with other agencies (including overseas agencies) concerned with the subject matter of the report; and
 - (d) the date by which the Commission must submit its report to the Minister.
- (3) On receiving a request from the Minister, the Commission must,—
 - (a) as soon as practicable, make the terms of reference publicly available; and
 - (b) prepare a report in accordance with the terms of reference; and
 - (c) provide the report to the Minister.

5L Tabling and publication of Commission's reports

- (1) This section applies in respect of a document (such as advice, a report, a recommendation, or an assessment) provided to the Minister by the Commission under this Act.
- (2) The Minister must present a copy of the document to the House of Representatives by the later of—
 - (a) 10 working days after the document is provided to the Minister; and
 - (b) if Parliament is not in session during the 10 working days after the document is provided to the Minister, as soon as practicable after the commencement of the next session of Parliament.
- (3) The Commission must make the document publicly available as soon as practicable after it is presented to the House of Representatives, but no later than 20 working days after providing it to the Minister (even if the document has not been presented to the House by that date).

5M Matters Commission must consider

In performing its functions and duties and exercising its powers under this Act, the Commission must consider, where relevant,—

- (a) current available scientific knowledge; and
- (b) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand; and
- (c) the likely economic effects; and
- (d) social, cultural, environmental, and ecological circumstances, including differences between sectors and regions; and
- (e) the distribution of benefits, costs, and risks between generations; and
- (f) the Crown-Māori relationship, te ao Māori (as defined in section 5H(2)), and specific effects on iwi and Māori; and
- (g) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention.

5N Consultation

- (1) In performing its functions and duties and exercising its powers under this Act, the Commission must—
 - (a) proactively engage with persons the Commission considers relevant to the functions, duties, and powers; and
 - (b) where the Commission considers it is necessary, provide for participation by the public.
- (2) The Commission may—
 - (a) publish and invite submissions on discussion papers and draft reports; and
 - (b) undertake any other type of consultation that it considers necessary for the performance of its functions and duties under this Act.

5O Commission must act independently

- (1) The Commission must act independently in performing its functions and duties and exercising its powers under this Act.
- (2) However, the Minister may direct the Commission to have regard to Government policy for the purposes of the Commission—
 - (a) recommending unit supply settings of the New Zealand emissions trading scheme; and
 - (b) providing advice about New Zealand's nationally determined contributions under the Paris Agreement (in a report requested under section 5K).

5P Obligation to maintain confidentiality

- (1) The Commission must keep confidential all information that is disclosed to it under section 99(2)(b)(iiib).
- (2) The Commission must not disclose the information, except—
 - (a) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or
 - (b) to the extent that the information is already in the public domain; or
 - (c) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or
 - (d) as provided under this Act or any other Act; or
 - (e) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act.
- (3) A person who knowingly fails to comply with this section commits an offence under section 130.

Part 1B

Emission reduction

Subpart 1—2050 target

5Q Target for 2050

- (1) The target for emissions reduction (the **2050 target**) requires that—
 - (a) net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year; and
 - (b) emissions of biogenic methane in a calendar year—
 - (i) are 10% less than 2017 emissions by the calendar year beginning on 1 January 2030; and
 - (ii) are 24% to 47% less than 2017 emissions by the calendar year beginning on 1 January 2050 and for each subsequent calendar year.
- (2) The 2050 target will be met if emissions reductions meet or exceed those required by the target.
- (3) In this section, **2017 emissions** means the emissions of biogenic methane for the calendar year beginning on 1 January 2017.

5R Review of inclusion of emissions from international shipping and aviation in 2050 target

The Commission must, no later than 31 December 2024, provide written advice to the Minister on whether the 2050 target should be amended to include emissions from international shipping and aviation (and, if so, how the target should be amended).

5S Other 2050 target reviews

- (1) The Commission must review the 2050 target—
 - (a) when preparing advice under section 5ZA on setting an emissions budget for an emissions budget period beginning on or after 2036; and
 - (b) at any other time the Minister requests a review.
- (2) The Commission must advise the Minister in writing of the outcome of any review, including any recommendations made in accordance with section 5T,—
 - (a) at the same time as giving advice to the Minister on setting an emissions budget (in the case of a review required under subsection (1)(a)); or
 - (b) as soon as practicable following completion of the review (in the case of a review requested by the Minister).

5T Recommendations to amend 2050 target

- (1) As a result of a review under section 5S, the Commission may recommend a change to—
 - (a) the time frame for achievement of the 2050 target (or part of the target):
 - (b) the levels of emission reductions required by the 2050 target (or part of the target):
 - (c) the greenhouse gases, emissions, and removals to which the 2050 target (or part of the target) applies:
 - (d) how the 2050 target (or part of the target) may be met, including limits on removals and offshore mitigation.
- (2) The Commission may recommend a change to the 2050 target only if—
 - (a) significant change has occurred, or is likely to occur, since the commencement of this section to 1 or more of the following, as they relate to climate change:
 - (i) global action:
 - (ii) scientific understanding of climate change:
 - (iii) New Zealand's economic or fiscal circumstances:
 - (iv) New Zealand's obligations under relevant international agreements:
 - (v) technological developments:

- (vi) distributional impacts:
 - (vii) equity implications (including generational equity):
 - (viii) the principal risks and uncertainties associated with emissions reductions and removals:
 - (ix) social, cultural, environmental, and ecological circumstances; and
- (b) the Commission is satisfied that the significant change justifies the change to the target.

5U Government response to target review recommendations

- (1) Within 12 months after receiving a recommendation to amend the 2050 target under section 5R or 5T, the Minister must advise the Commission in writing of the Government's response.
- (2) The response must include reasons for any departure from the Commission's recommendation.
- (3) The Minister must make the response publicly available and present a copy to the House of Representatives as soon as practicable, but no later than 10 working days after it has been provided to the Commission.

Subpart 2—Setting emissions budgets

5V Interpretation

In this subpart and subparts 3 and 4, unless the context otherwise requires,—

advice includes recommendations

banked has the meaning given in section 5ZF(1)

borrowed has the meaning given in section 5ZF(3).

5W Purpose of this subpart

The purpose of this subpart and subparts 3 and 4 is to require the Minister to set a series of emissions budgets—

- (a) with a view to meeting the 2050 target and contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and
- (b) in a way that allows those budgets to be met domestically; and
- (c) that provides greater predictability for all those affected, including households, businesses, and investors, by giving advance information on the emissions reductions and removals that will be required.

5X Duty of Minister to set emissions budgets and ensure they are met

- (1) The Minister must set an emissions budget for each emissions budget period in accordance with this subpart.

- (2) From 31 December 2021, there must be 3 consecutive emissions budgets, 1 current and 2 prospective, in place at any one time.
- (3) An emissions budget must be set and notified in the *Gazette* under section 5ZD as follows:
 - (a) for the emissions budget period 2022 to 2025, by 31 December 2021:
 - (b) for the emissions budget period 2026 to 2030, by 31 December 2021:
 - (c) for the emissions budget period 2031 to 2035, by 31 December 2021:
 - (d) for the emissions budget period 2036 to 2040, by 31 December 2025:
 - (e) for the emissions budget period 2041 to 2045, by 31 December 2030:
 - (f) for the emissions budget period 2046 to 2050, by 31 December 2035:
 - (g) for any subsequent emissions budget period, by 31 December not less than 10 years before that emissions budget period commences.
- (4) The Minister must ensure that the net accounting emissions do not exceed the emissions budget for the relevant emissions budget period.

5Y Contents of emissions budgets

- (1) Each emissions budget must state the total emissions that will be permitted for the relevant emissions budget period, expressed as a net quantity of carbon dioxide equivalent.
- (2) Each emissions budget must include all greenhouse gases.

5Z How emissions budgets are to be met

- (1) Emissions budgets must be met, as far as possible, through domestic emissions reductions and domestic removals.
- (2) However, offshore mitigation may be used if there has been a significant change of circumstance—
 - (a) that affects the considerations on which the relevant emissions budget was based; and
 - (b) that affects the ability to meet the relevant emissions budget domestically.

Subpart 3—Role of Commission to advise on emissions budgets

5ZA Commission to advise Minister

- (1) The Commission must advise the Minister on the following matters relevant to setting an emissions budget:
 - (a) the recommended quantity of emissions that will be permitted in each emissions budget period; and
 - (b) the rules that will apply to measure progress towards meeting emissions budgets and the 2050 target; and

- (c) how the emissions budgets, and ultimately the 2050 target, may realistically be met, including by pricing and policy methods; and
 - (d) the proportions of an emissions budget that will be met by domestic emissions reductions and domestic removals, and the amount by which emissions of each greenhouse gas should be reduced to meet the relevant emissions budget and the 2050 target; and
 - (e) the appropriate limit on offshore mitigation that may be used to meet an emissions budget, and an explanation of the circumstances that justify the use of offshore mitigation (*see* section 5Z).
- (2) In preparing advice for the Minister under subsection (1), the Commission must have regard to the matters set out in section 5ZC.
- (3) Before the Commission provides advice to the Minister on an emissions budget, it must—
- (a) make the proposed advice publicly available and invite comments on that advice; and
 - (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Commission.
- (4) The Commission must provide its advice to the Minister,—
- (a) in the case of the first 3 emissions budgets, not later than 1 February 2021;
 - (b) in the case of all subsequent emissions budgets, at least 12 months before an emissions budget must be notified under section 5ZD (or at least 15 months before, if a general election is to take place in that year).

5ZB Minister's response to Commission

- (1) Before the Minister sets an emissions budget, the Minister must be satisfied that there has been adequate consultation.
- (2) If the Minister is not satisfied that there has been adequate consultation, the Minister must—
- (a) make the proposed emissions budget publicly available; and
 - (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Minister.
- (3) At the time when the Minister sets and notifies an emissions budget under section 5ZD in accordance with the dates set out in section 5X(3), the Minister must provide a written response that—
- (a) responds to the advice received from the Commission; and
 - (b) includes a proposed emissions budget for the relevant emissions budget period; and
 - (c) is presented to the House of Representatives and made publicly available.

- (4) If the proposed emissions budget departs from the advice of the Commission, the Minister must—
- (a) decide whether it is necessary to further consult persons likely to have an interest in the emissions budget; and
 - (b) explain the reasons for any departures from the Commission’s advice in the response provided under subsection (3).

5ZC Matters relevant to advising on, and setting, emissions budgets

- (1) This section applies to—
- (a) the Commission, when it is preparing advice for the Minister under section 5ZA;
 - (b) the Minister, when the Minister is determining an emissions budget.
- (2) The Commission and the Minister must—
- (a) have particular regard to how the emissions budget and 2050 target may realistically be met, including consideration of—
 - (i) the key opportunities for emissions reductions and removals in New Zealand; and
 - (ii) the principal risks and uncertainties associated with emissions reductions and removals; and
 - (b) have regard to the following matters:
 - (i) the emission and removal of greenhouse gases projected for the emissions budget period;
 - (ii) a broad range of domestic and international scientific advice;
 - (iii) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand;
 - (iv) the need for emissions budgets that are ambitious but likely to be technically and economically achievable;
 - (v) the results of public consultation on an emissions budget;
 - (vi) the likely impact of actions taken to achieve an emissions budget and the 2050 target, including on the ability to adapt to climate change;
 - (vii) the distribution of those impacts across the regions and communities of New Zealand, and from generation to generation;
 - (viii) economic circumstances and the likely impact of the Minister’s decision on taxation, public spending, and public borrowing;
 - (ix) the implications, or potential implications, of land-use change for communities;

- (x) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention:
- (xi) New Zealand's relevant obligations under international agreements.

5ZD Publication of emissions budgets

- (1) Before an emissions budget is notified in the *Gazette* and presented to the House of Representatives, the Minister must consult the appropriate representative of each of the political parties represented in the House of Representatives.
- (2) When an emissions budget has been finalised by the Minister in accordance with this subpart, the emissions budget must be—
 - (a) notified in the *Gazette*, stating the date on which the emissions budget period commences and ends; and
 - (b) presented by the Minister to the House of Representatives; and
 - (c) made publicly available at the direction of the Minister.
- (3) A *Gazette* notice published under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

Revision of emissions budgets

5ZE When emissions budgets may be revised

Notified emissions budgets

- (1) The Commission may, when providing advice and recommendations on a future emissions budget under section 5ZA, recommend that any emissions budgets notified under section 5ZD be revised if, since the emissions budgets were originally set,—
 - (a) there have been methodological improvements to the way that emissions are measured and reported; or
 - (b) 1 or more significant changes have affected the considerations listed in section 5ZC(2) on which an emissions budget was based.
- (2) At any time the 2050 target is revised, the Commission may provide advice recommending that the relevant emissions budgets be revised to reflect the change in the 2050 target.
- (3) An emissions budget notified under section 5ZD may be revised only if the Commission recommends the revision.

Minister's determination

- (4) After receiving advice from the Commission, the Minister must determine whether to revise an emissions budget.
- (5) The Minister must—

- (a) take into account—
 - (i) the Commission’s advice; and
 - (ii) the matters set out in section 5ZC(2); and
 - (b) follow the procedure set out in sections 5ZB and 5ZD.
- (6) However, the Minister must not revise an emissions budget—
- (a) after an emissions budget period has begun, unless the circumstances are exceptional; or
 - (b) after the end of the emissions budget period to which it relates; or
 - (c) in any way other than that required if any of the circumstances described in subsection (1) or (2) apply.
- (7) If the Minister determines to revise an emissions budget, the Minister must present to the House of Representatives an explanation of the reasons for revising the original emissions budget, having regard to—
- (a) the matters described in subsection (1)(a) and (b); and
 - (b) the prohibition on revising an emissions budget (*see* subsection (6)) and any exceptional circumstances that led to the Minister’s decision (*see* subsection (6)(a)).

Banking and borrowing

5ZF Power to bank or borrow

Banking

- (1) If the total emissions in an emissions budget period are lower than the emissions budget for that period, the excess reduction may be carried forward to the next emissions budget period (**banked**).
- (2) Banking provides that the emissions budget for the next emissions budget period will be increased by the amount carried forward.

Borrowing

- (3) If the total emissions in an emissions budget period are greater than the emissions budget for that emissions budget period, an amount from the next emissions budget may be carried back to the preceding emissions budget period (**borrowed**).
- (4) Borrowing provides that the emissions budget for the next emissions budget period will be reduced by the amount carried back.
- (5) The amount carried back under subsection (3) must not exceed 1% of the emissions budget for the next emissions budget period.
- (6) The Minister must decide whether to bank or borrow, and must determine the extent to which banking or borrowing is permitted.
- (7) Before the Minister makes a decision under subsection (6),—

- (a) the Commission must, in its report on an emissions budget period, provide advice on the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods; and
- (b) the Minister must have regard to that advice.

Emissions reduction plan to be prepared

5ZG Requirement for emissions reduction plan

- (1) The Minister must prepare and make publicly available a plan setting out the policies and strategies for meeting the next emissions budget, and may include policies and strategies for meeting emissions budgets that have been notified under section 5ZD in accordance with the dates set out in section 5X(3).
- (2) The plan must be prepared and published—
 - (a) after the relevant emissions budget has been notified under section 5ZD; but
 - (b) before the commencement of the relevant emissions budget period.
- (3) The plan must include—
 - (a) sector-specific policies to reduce emissions and increase removals; and
 - (b) a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change; and
 - (c) a strategy to mitigate the impacts that reducing emissions and increasing removals will have on employees and employers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action; and
 - (d) any other policies or strategies that the Minister considers necessary.

5ZH Commission to advise on emissions reduction plans

- (1) Not later than 24 months before the beginning of an emissions budget period, the Commission must provide to the Minister advice on the direction of the policy required in the emissions reduction plan for that emissions budget period.
- (2) Despite subsection (1), the first advice must be given no later than 1 February 2021.
- (3) In preparing its advice, the Commission must apply section 5ZC(2) as if it referred to preparing an emissions reduction plan.

5ZI Minister to prepare and make emissions reduction plan publicly available

- (1) In preparing a plan and supporting policies and strategies for an emissions budget period, the Minister must—
 - (a) consider the advice received from the Commission under section 5ZH for meeting emissions budgets; and

- (b) ensure that the consultation has been adequate, including with sector representatives, affected communities, and iwi and Māori, and undertake further consultation as the Minister considers necessary.
- (2) Before the relevant emissions budget period commences, the Minister must publish in the *Gazette* the plan, policies, and strategies.
- (3) The Minister may, at any time, amend the plan and supporting policies and strategies to maintain their currency,—
 - (a) using the same process as required for preparing the plan; or
 - (b) in the case of a minor or technical change, without repeating the process used for preparing the plan.
- (4) The Minister must—
 - (a) make an emissions reduction plan publicly available 12 months before the commencement of a budget period; and
 - (b) present a copy of each emissions reduction plan to the House of Representatives.

Subpart 4—Monitoring

5ZJ Commission to monitor progress towards meeting emissions budgets

- (1) The Commission must regularly monitor and report on progress towards meeting an emissions budget and the 2050 target in accordance with sections 5ZK and 5ZL (which relate to reporting requirements).
- (2) The Commission must carry out its monitoring function in accordance with the rules referred to in section 5ZA(1)(b) (which relates to measuring progress towards meeting emissions budgets and the 2050 target).

5ZK Commission to report annually on results of monitoring

- (1) The Commission must prepare an annual report that includes, for the most recent year of the emissions budget period for which data is available from the New Zealand Greenhouse Gas Inventory,—
 - (a) measured emissions; and
 - (b) measured removals.
- (2) The report must also include—
 - (a) the latest projections for current and future emissions and removals; and
 - (b) an assessment of the adequacy of the emissions reduction plan and progress in its implementation, including any new opportunities to reduce emissions.
- (3) Not later than 3 months after the publication of a New Zealand Greenhouse Gas Inventory report, the Commission must provide its annual report prepared under subsection (1) to the Minister.

- (4) Not later than 3 months after receiving the Commission's annual report under subsection (3), the Minister must present to the House of Representatives and make publicly available a report that—
- (a) sets out the Minister's response to the Commission's report and recommendations; and
 - (b) describes the progress made in implementing the current emissions reduction plan; and
 - (c) notes any amendments to that plan.

5ZL Commission to report at end of emissions budget period

- (1) Not later than 2 years after the end of an emissions budget period, the Commission must prepare a report for the Minister evaluating the progress made in that emissions budget period towards meeting the emissions budget in the next emissions budget period, including—
- (a) an evaluation of how well the emissions reduction plan has contributed to that progress; and
 - (b) recommendations on any banking and borrowing that would be appropriate; and
 - (c) an assessment of the amount of offshore mitigation required to meet the emissions budget for the period to which the report relates, subject to the limit proposed by the Commission under section 5ZA(1)(e).
- (2) The Minister must present a report to the House of Representatives setting out the Minister's response to the Commission's report—
- (a) not later than 3 months after receiving the Commission's report; or
 - (b) if Parliament is not in session, as soon as practicable after the commencement of the next session of Parliament.
- (3) The Minister's response to the Commission's report must—
- (a) provide reasons for any failure to meet the relevant emissions budget and for any departures from the Commission's recommendations; and
 - (b) be made publicly available.

Subpart 5—Effect of 2050 target and emissions budgets

5ZM Effect of failure to meet 2050 target and emissions budgets

- (1) No remedy or relief is available for failure to meet the 2050 target or an emissions budget, and the 2050 target and emissions budgets are not enforceable in a court of law, except as set out in this section.
- (2) If the 2050 target or an emissions budget is not met, a court may make a declaration to that effect, together with an award of costs.

- (3) If a declaration is made and becomes final after all appeals or rights of appeal expire or are disposed of, the Minister must, as soon as practicable, present to the House of Representatives a document that—
- (a) brings the declaration to the attention of the House of Representatives; and
 - (b) contains advice on the Government’s response to the declaration.

5ZN 2050 target and emissions budget are permissive considerations

If they think fit, a person or body may, in exercising or performing a public function, power, or duty conferred on that person or body by or under law, take into account—

- (a) the 2050 target; or
- (b) an emissions budget; or
- (c) an emissions reduction plan.

5ZO Guidance for departments

- (1) The responsible Minister may issue guidance for departments on how to take the 2050 target or an emissions budget into account in the performance of their functions, powers, and duties (or classes of those functions, powers, and duties).
- (2) The responsible Minister must, as soon as practicable after issuing the guidance, make it publicly available.

**Part 1C
Adaptation**

National climate change risk assessment

5ZP National climate change risk assessment

- (1) A national climate change risk assessment must—
 - (a) assess the risks to New Zealand’s economy, society, environment, and ecology from the current and future effects of climate change; and
 - (b) identify the most significant risks to New Zealand, based on the nature of the risks, their severity, and the need for co-ordinated steps to respond to those risks in the next 6-year period.
- (2) Sections 5L and 5ZQ apply to all national climate change risk assessments except the first one.
- (3) Section 5ZR applies to the first national climate change risk assessment.

5ZQ Preparation of national climate change risk assessment

- (1) The Commission must, no later than 6 years after the date on which the most recent national climate change risk assessment was made publicly available,—
 - (a) provide the next national climate change risk assessment to the Minister; and
 - (b) make that assessment publicly available.
- (2) At the same time as making a national climate change risk assessment publicly available (in compliance with subsection (1)(b) and section 5L(3)), the Commission must make any evidence commissioned to support its preparation publicly available.
- (3) In preparing a national climate change risk assessment, the Commission must take into account the following:
 - (a) economic, social, health, environmental, ecological, and cultural effects of climate change;
 - (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors;
 - (c) New Zealand's relevant obligations under international agreements;
 - (d) how the assessment aligns or links with any other relevant national risk assessments produced by central government entities;
 - (e) current effects and likely future effects of climate change;
 - (f) any information received as a result of requests made under section 5ZW;
 - (g) scientific and technical advice.
- (4) The Commission may also take into account—
 - (a) opportunities arising for New Zealand's economy, society, and environment as a result of the effects of climate change; and
 - (b) any other factor that it thinks is relevant or appropriate.

5ZR Minister must prepare first national climate change risk assessment

- (1) The Minister must, no later than 1 year after the commencement of this Part,—
 - (a) prepare the first national climate change risk assessment; and
 - (b) present the assessment to the House of Representatives; and
 - (c) make the assessment and any evidence commissioned to support its preparation publicly available.
- (2) Section 5ZQ(3) and (4) applies with the necessary modifications for the purposes of this section.

*National adaptation plan***5ZS National adaptation plan**

- (1) In response to each national climate change risk assessment, the Minister must prepare a national adaptation plan.
- (2) A national adaptation plan must set out—
 - (a) the Government’s objectives for adapting to the effects of climate change; and
 - (b) the Government’s strategies, policies, and proposals for meeting those objectives; and
 - (c) the time frames for implementing the strategies, policies, and proposals; and
 - (d) how the matters in paragraphs (a) to (c) address the most significant risks identified in the most recent national climate change risk assessment; and
 - (e) the measures and indicators that will enable regular monitoring of and reporting on the implementation of the strategies, policies, and proposals.
- (3) A national adaptation plan may include any other matter that the Minister considers relevant.
- (4) In preparing a national adaptation plan, the Minister must take into account the following:
 - (a) economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi and Māori;
 - (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors;
 - (c) New Zealand’s relevant obligations under international agreements;
 - (d) any information received as a result of requests made under section 5ZW;
 - (e) any relevant advice or reports received from the Commission;
 - (f) the ability of communities or organisations to undertake adaptation action, including how any action may be funded;
 - (g) scientific and technical advice.
- (5) The Minister may also take into account any other matter that the Minister thinks is relevant or appropriate.
- (6) In preparing a national adaptation plan, the Minister must undertake public consultation on the draft plan.

5ZT National adaptation plan must be presented to Parliament and made publicly available

- (1) The Minister must, no later than 2 years after the date on which the most recent national climate change risk assessment is made publicly available,—
 - (a) present the national adaptation plan to the House of Representatives; and
 - (b) make the national adaptation plan publicly available.
- (2) The Minister may make minor or technical changes to a national adaptation plan and must make any new version publicly available (but need not present the new version to the House of Representatives).

Progress reports

5ZU Progress reports on national adaptation plan

- (1) For each national adaptation plan, the Commission must provide the Minister with a progress report that evaluates the implementation of the adaptation plan and its effectiveness—
 - (a) 2 years after the adaptation plan is made publicly available; and
 - (b) 4 years after the adaptation plan is made publicly available; and
 - (c) 6 years after the adaptation plan is made publicly available.
- (2) Each progress report must include—
 - (a) an assessment of the progress made towards implementing the strategies, policies, and proposals included in the plan; and
 - (b) an assessment of the degree to which the objectives of the plan have been achieved and how well the plan responds to the most significant risks posed by climate change; and
 - (c) an identification of any known barriers to the implementation and effectiveness of the current plan, including recommendations for how those barriers might be addressed or overcome in future; and
 - (d) any other relevant matters required to support the report.
- (3) The Commission is not required to provide the Minister with a progress report if the date for providing the report to the Minister under subsection (1) is more than 1 year after the date on which a subsequent adaptation plan is made publicly available.

5ZV Minister must respond to progress report

The Minister must, no later than 6 months after the date on which the Minister receives a progress report,—

- (a) respond in writing to the progress report; and
- (b) make the response publicly available and present it to the House of Representatives.

*Power to request provision of information***5ZW Minister or Commission may request certain organisations to provide information on climate change adaptation**

- (1) The Minister or the Commission may, in writing, request that a reporting organisation provide all or any of the following information:
 - (a) a description of the organisation's governance in relation to the risks of, and opportunities arising from, climate change:
 - (b) a description of the actual and potential effects of the risks and opportunities on the organisation's business, strategy, and financial planning:
 - (c) a description of the processes that the organisation uses to identify, assess, and manage the risks:
 - (d) a description of the metrics and targets used to assess and manage the risks and opportunities, including, if relevant, time frames and progress:
 - (e) any matters specified in regulations.
- (2) The reporting organisation must comply with a request made under subsection (1).
- (3) The Minister must, as soon as practicable, provide the Commission with a copy of any information received in response to a request made by the Minister.
- (4) The Commission must, as soon as practicable, provide the Minister with a copy of any information received in response to a request made by the Commission.
- (5) The Minister and the Commission must not publicly disclose any information received in response to a request, unless disclosure of the information is necessary to enable the Minister or the Commission to perform a function or duty imposed by this Part.
- (6) Subsection (5) does not apply in respect of information that is already in the public domain.
- (7) Before publicly disclosing any information received in response to a request, the Minister or Commission must consult with the person to whom the information relates.
- (8) For the purposes of this section and section 5ZX, the following are **reporting organisations**:
 - (a) the Public Service, as defined in section 27 of the State Sector Act 1988:
 - (b) local authorities, as defined in section 5(1) of the Local Government Act 2002:
 - (c) council-controlled organisations, as defined in section 6(1) of the Local Government Act 2002:
 - (d) Crown entities, as defined in section 7(1) of the Crown Entities Act 2004, but excluding school boards of trustees:

- (e) companies listed in Schedule 4A of the Public Finance Act 1989:
- (f) organisations listed in Schedule 1 of the State-Owned Enterprises Act 1986:
- (g) lifeline utilities listed in Schedule 1 of the Civil Defence Emergency Management Act 2002:
- (h) the New Zealand Police:
- (i) the New Zealand Defence Force.

5ZX Regulations relating to requiring provision of information

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations specifying all or any of the following:
 - (a) requirements that relate to information that is provided in response to a request under section 5ZW(1), including different requirements for different sectors, classes of activity, or geographical areas:
 - (b) a date by which or time within which requested information must be provided to the Minister:
 - (c) ongoing or recurring reporting requirements (for example, requiring the provision of further information at regular intervals following a request):
 - (d) any administrative matters relating to responses to requests.
- (2) In preparing the regulations, the Minister must consider—
 - (a) the ability to tailor a request to reflect the size and capability of the reporting organisation; and
 - (b) the potential extent and significance of climate change effects on the functions of the reporting organisation; and
 - (c) the avoidance of unnecessary duplication of information provided within existing reporting frameworks.
- (3) Before recommending the making of the regulations, the Minister must consult the Commission and the reporting organisations that the Minister considers may be affected by the proposed regulations.

9 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 1 of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Consequential amendments

10 Section 99 amended (Obligation to maintain confidentiality)

- (1) In section 99(2)(b), replace “may” with “must”.
- (2) After section 99(2)(b)(iiia), insert:

(iiib) to the Climate Change Commission for the purpose of assisting the Commission to perform its functions and duties and exercise its powers under this Act; or

11 Sections 224 and 225 repealed

Repeal sections 224 and 225.

12 Amendments to other enactments

Amend the enactments specified in Schedule 2 as set out in that schedule.

13 Notice revoked

The Climate Change Response (2050 Emissions Target) Notice 2011 (*Gazette* 2011, p 987) is revoked.

Schedule 1
New Schedule 1AA inserted

s 9

Schedule 1AA
Transitional, savings, and related provisions

s 4A

Part 1
Provisions relating to Climate Change Response (Zero Carbon)
Amendment Act 2019

1 Appointment of first members of Commission

- (1) This clause applies in respect of the appointment of the first 7 members of the Commission.
- (2) The Minister may recommend to the Governor-General that a person be appointed as a member if the Minister has, either before or after the commencement of Part 1A,—
 - (a) had regard to the matters in section 5H; and
 - (b) consulted representatives of all other political parties in Parliament.
- (3) This clause overrides section 5E.

2 Preparatory work for first national climate change risk assessment

- (1) This clause applies if, before the commencement of Part 1C, the Minister takes any steps referred to in section 5ZR(1).
- (2) Part 1C must be treated as if it were in force when the steps are taken.
- (3) If the Minister makes a national climate change risk assessment publicly available before the commencement of Part 1C,—
 - (a) the national climate change risk assessment must be treated as the first national climate change risk assessment under Part 1C; and
 - (b) the Minister must present the first national adaptation plan to the House of Representatives and make it publicly available no later than 2 years after the date on which Part 1C commences.

3 Savings of targets for greenhouse gas emissions made under section 224

- (1) A target for greenhouse gas emissions made under section 224 before the commencement of the Climate Change Response (Zero Carbon) Amendment Act 2019—
 - (a) continues in force as if section 224 had not been repealed; and

- (b) may be amended or revoked as if section 224 had not been repealed.
- (2) This clause does not apply to the target set in the Climate Change Response (2050 Emissions Target) Notice 2011 (*Gazette* 2011, p 987).

Schedule 2

Amendments to other enactments

s 12

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, insert in its appropriate alphabetical order:

Climate Change Commission

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Climate Change Commission

Remuneration Authority Act 1977 (1977 No 110)

In Schedule 4, insert in its appropriate alphabetical order:

The members of the Climate Change Commission

Legislative history

8 May 2019	Introduction (Bill 136–1)
21 May 2019	First reading and referral to Environment Committee
21 October 2019	Reported from Environment Committee (Bill 136–2)
5 November 2019	Second reading
6 November 2019	Committee of the whole House (Bill 136–3)
7 November 2019	Third reading
13 November 2019	Royal assent

This Act is administered by the Ministry for the Environment.