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Submission on the Climate Change Response (Zero Carbon) Amendment Bill
Environment Select Committee
Parliament
Submitted online

PEPANZ Submission: Climate Change Response (Zero Carbon) Amendment Bill

The Petroleum Exploration and Production Association of New Zealand ("PEPANZ") represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

This document constitutes PEPANZ's submission to the Environment Committee on *Climate Change Response (Zero Carbon) Amendment Bill*[1], which closes for consultation on 16 July 2019. Note that PEPANZ previously submitted on the *Our Climate Your Say: Consultation on the Zero Carbon Bill* on 19 July 2018 and this can be found at https://www.pepanz.com/dmsdocument/82.

We wish to appear before the select committee in support of our submission.

Executive summary

i. PEPANZ supports emission reductions;

ii. The name of the bill is not representative of New Zealand's obligations or the targets proposed;

iii. Multilateral support across the political spectrum is critical;

iv. We support emission targets and reductions made in line with trade competitors;

v. Emissions leakage should be specifically considered by the Commission;

vi. We support the targets and budgets being set by democratically elected parliamentarians

vii. We support flexibility in the framework in relation to the target and budgets;

viii. Factors of consideration should explicitly include comprehensive consideration of economic and energy security consequences;

[1] https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_87861/climate-change-response-zero-carbon-amendment-bill

ix. The Commission should have a member with understanding of business competitiveness;

x. The Commission should consider not only the advantages of early adoption of technology but also delayed adoption;

xi. Access to legitimate international units is important for competitiveness and to achieve emission abatement at the lowest marginal cost;

xii. We support requirements for the Commission to publicly consult;

xiii. The definition of net emissions must include removals from carbon capture and storage;

xiv. The case for enabling the Minister to require "lifeline utility providers" to provide climate change adaptation information has not been adequately made.

PEPANZ supports emission reductions

1. PEPANZ supports policies that reduce global greenhouse gas emissions in an economically-efficient manner, while maintaining the trade-competitiveness of domestic firms.

2. We acknowledge the importance of the Paris Agreement, which states that "In order to achieve the long-term temperature goal … [parties must] … achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century…"

The name of the bill is not representative of New Zealand's obligations or the targets proposed

3. We respectfully query the suitability of the name of the bill. It is currently entitled the *Climate Change* Response *(Zero Carbon) Amendment Bill*, but the Paris Agreement is about net-zero emissions (i.e. not absolute zero), and the targets relate not just to carbon but to other greenhouse gases as well. We suggest the Committee consider whether a more accurate name can be selected.

Multilateral support across the political spectrum is critical

4. To achieve its long-term goals, the Climate Change Response (Zero Carbon) Amendment Bill must establish an enduring set of institutions. We consider it critically important that the committee and political parties work to establish a regime which enjoys multilateral political support, with support from both major parties being especially crucial. In the absence of cross-party support, the desired goal of certainty and stability will not be achieved and businesses may lack the confidence to invest in a manner conducive with the Government's currently stated goals.

5. Without cross-party support for the fundamental aspects of the regime including the emissions targets, businesses have an incentive to await a change of government and to avoid taking actions to reduce emissions.

We support emission targets and reductions made in line with trade competitors

6. As a country, New Zealand should certainly pursue emission reductions and maintain international credibility, but policy-compelled reductions should fundamentally only be required in a manner that is comparable with actions of New Zealand's trade competitors. In setting emission targets and policies (including free allocation of units to emissions intensive, trade-exposed sectors), it is critical to consider the revealed (rather than simply stated) preferences and actions of trade competitors. This is necessary to ensure the ongoing competitiveness of domestic firms.

7. There has been some suggestion that "ambition in New Zealand will bring reputational benefits and have a positive influence on other countries' mitigation efforts", but we note the Treasury's view that there is "… little evidence or argument is available to support that assumption."[2]

8. We note that New Zealand contributes 0.17% of global emissions[3], which means that we alone cannot influence global outcomes in terms of emissions. As the original consultation document for the Bill stated, reducing climate change requires "the rest of the world to act". In the event of: inadequate global action; New Zealand's goal being too ambitious; or premature action, the ultimate outcome may be to materially weaken the economy[3] for very little global benefit, and to also enter path dependency and accordingly forego options which have value.

Emissions leakage should be specifically considered by the Commission

9. The competitiveness of New Zealand firms and corresponding risks of carbon leakage should be foremost in mind when developing emissions policy. The petroleum sector is a global and trade-exposed industry, which means cost imposts on goods which are either exported or face import substitutes cannot be simply passed on to consumers. In the petroleum sector, this is especially relevant to exported oil and petrochemicals such as methanol produced from natural gas.

10. To ensure that risks of emissions leakage is specifically addressed by the Commission, we recommend that criteria be added to the legislation. We suggest that decision-making criteria include consideration of the effect of global emissions from New Zealand reductions[4].

Some remarks on emissions leakage

11. We briefly address the argument put forward by some which states that emissions leakage is no longer an issue in the post-Paris Agreement world. Under the thesis that considers emissions leakage risk low, it is considered that because a country has domestic targets under the Paris Agreement, it cannot take on new emitting industries without having to reduce emissions elsewhere in its economy by a corresponding amount. However, we consider that scenario only applies when all countries have fixed nationally-determined contributions and corresponding enforced domestic emission caps. Many large emitters do not meet these standards – for example, China merely intends to peak its emissions by 2030 and then to make reductions. That currently incentivises China to obtain as high a peak as possible, and provides plenty of emissions capacity for it to welcome new industries that can shift there from countries that close down emissions-intensive industry.

12. In the scenario of New Zealand methanol no longer being produced here[5] due to emission-pricing imposts, it is most likely that production will simply shift to China. This is because in the Asian market, Chinese production of methanol from coal is the next cheapest on the cost curve after New Zealand's methanol production.

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[2] Regulatory Impact Statement, page 15. https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-zero-carbon-bill

[3] As outlined in the original *Our Climate Your Say* discussion document (Table 2, page 25), New Zealand could face:

1. "slower rates of economic growth as a result of higher emissions prices and other transition policies
2. competitiveness issues in trade-exposed emissions-intensive industries
3. decline in output and jobs for higher emissions sectors
4. slower rates of growth in household incomes."

[4] Such sections may include: New sections 5L (Matters Commission must consider, (5Z (Matters relevant to advising on, and setting, emissions budgets), 5Q (Recommendations to amend 2050 target), and 5Z (Matters relevant to advising on, and setting, emissions budgets).

[5] Methanol is produced from natural gas in the Taranaki for export. Methanol is a petrochemical for nom-combustible use in plastics for example as well as a fuel source.

13. We have seen commentary suggesting that methanol production would not be able to shift to China because China has an emissions trading scheme, but we point out however that the Chinese scheme only covers electricity generation and does not apply to petrochemical production.

We support the targets and budgets being set by democratically elected parliamentarians

14. We support the Bill providing for the target and emissions budgets to be ultimately determined by democratically-elected parliamentarians, and not independent officials. Correspondingly, we support the role of the Commission in having advisory and monitoring functions as proposed by the Bill.

15. We consider it is appropriate that the democratically accountable political executive has ultimate responsibility for decisions. This is due the normative nature of the decisions (i.e. relating to 'what ought to be') which will have deep and wide impacts across the entire economy and society. Giving the Commission an advisory-only function also increases the likelihood of the Commission successfully enduring changes of government in the future.

We support flexibility in the framework in relation to the target and budgets

16. We consider that targets and budgets should be able to be revised, because:

    - Such a provision provides a the democratically elected Government of the day with the ability to have influence over emission policies and the budgets and pathways to meet targets; and
    - The future is uncertain and, especially over long timeframes, many contingencies exist (e.g. technological, scientific, social and economic developments) which may warrant revision to targets or budgets.

17. The legislative framework should have flexibility to ensure that our goals are aligned with both domestic circumstances and global action, especially from trade competitors.

18. We generally support the criteria for allowing changes to budgets and targets, but would prefer a more general "exceptional circumstances/ significant reasons" test in section 5ZB(6)(a) and wherever else relevant in the bill.

19. We note of course that the parliament is sovereign so a future parliament can change any aspect of law it wants (including an emissions goal), so provisions in the current bill about what a future parliament can change are not so much constitutional in nature as they are moral, i.e. outlining the moral expectation of the current parliament that future parliaments will only amend the targets in serious circumstances.

Factors of consideration should explicitly include comprehensive consideration of economic and energy security consequences.

20. Various parts of the legislation[6] outline criteria and matters for consideration in performing duties, target and budgets etc. "Likely economic effects" and "economic circumstances" are specified as factors in some areas of the bill, but we submit that all criteria should explicitly include comprehensive consideration of economic and energy security consequences.

[6] Sections that we have identified include New sections 5L (Matters Commission must consider, (5Z (Matters relevant to advising on, and setting, emissions budgets), 5Q (Recommendations to amend 2050 target), 5Z (Matters relevant to advising on, and setting, emissions budgets), 5ZN (Preparation of national climate change risk assessment), and 5ZQ (National adaptation plan).

21. Specifically we suggest consideration be required in relation to:

    - economic circumstances and, in particular, the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy, and
    - energy policy and, in particular, the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy.

22. This is important because the potential impact on the standard of living for New Zealanders is substantial. For example, NZIER's modelling shows New Zealand's GDP could be 10-21% lower in 2050 than would otherwise be the case in order to meet the net zero emissions target.[7]

The Commission should have a member with understanding of business competitiveness

23. New section 5H specifies matters to be considered when appointing members of the Commission. We recommend that understanding business competitiveness should be introduced as a factor for consideration by the Minister. This is because, as a trade-exposed, export dependent nation it is crucial that the Commission's advice can understand and account for the commercial impacts of its recommendations.

The Commission should consider not only the advantages of early adoption of technology but also delayed adoption

24. New section 5L specifies matters that the Commission must consider. One such matter is "technology that could be efficiently adopted and the likelihood of any advantages arising from early adoption of the technology". This is a reasonable consideration in itself, but we consider it should be tempered by requiring the Commission to consider the converse: namely, the advantages of adoption of technology after they have been tried and proven by others.

25. We raise this point because if, as we are often told, technology costs are falling so rapidly, there is merit and legitimacy in waiting to take action *after* technology has become proven and more economic. This contrasts to acting early on adopting new technologies while they are still expensive and, in their infancy, thereby foregoing cheaper alternatives.

26. We make the following remark, which we originally posited in our submission on *Our Climate Your Say: Consultation on the Zero Carbon Bill*[8]*:*

> In relation to technology relevant to climate change, the Commission and Government should be practical and realistic about what technologies are available and economically and technically feasible at scale. We should only set goals that we know can realistically be achieved and should not rely on mere hope that the right technologies and innovations will come along. To rely on hope compromises the credibility of the goal itself, and means that the negative economic effects will be harsh as sectors have to step up efforts more than was originally imagined to be required.

Access to legitimate international units is important for competitiveness and to achieve emission abatement at the lowest marginal cost

27. The Explanatory Note of the Bill states that "The Bill allows the Government to purchase reductions sourced from overseas to meet emissions budgets, but only as a last resort and not as a first choice." We oppose this arbitrary presumption against international units.

28. A fundamental value of the Emissions Trading Scheme, (compared to a simple carbon tax) is that it enables international trading to achieve emission reductions at the lowest marginal cost. To

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[7] *Zero Carbon Bill economic analysis: A synthesis of economic impacts* (2018) Ministry for the Environment (page 19). https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/Zero-Carbon-Bill-Economic-Analysis-Report-FINAL.pdf

[8] Page 5. https://www.pepanz.com/dmsdocument/82

realise that goal, it is essential that international units can be used if they can be demonstrated to be of high integrity.

29. Without access to international credits, ambitious emission reductions will weaken New Zealand firms by imposing higher costs than those faced by trade-competitors. This point is especially relevant if New Zealand's targets are to be more ambitious than those of other nations.

30. Noting that international carbon markets are still emerging, we support using bilateral or multilateral arrangements between agreeable states. On this theme, we support the Productivity Commission when it stated in its Report on the Low Emissions Economy:

> The other approach of the Paris Agreement for internationally transferred mitigation outcomes is a government-to-government "cooperative" approach that lets countries coordinate trading among themselves, provided they follow accounting principles approved by the UNFCCC. An example of this approach is a voluntary and cooperative "climate team model" that some non-government organisations in New Zealand and Colombia are exploring. New Zealand would "invest in" emissions reductions in Colombia that are on top of Colombia's NDC. Payments would flow in direct proportion to verified reductions within an agreed price range and maximum budget.[9]

31. Noting that New Zealand could invest in emission reductions in other countries (according the example posited by the Productivity Commission), opportunities for other countries to invest in New Zealand could also be explored.

We support requirements for the Commission to publicly consult

32. Section 5ZE requires that the Commission must "consult widely with New Zealanders, including relevant sector representatives and affected communities". We strongly support this, as consultation will help to ensure access to the best available information and to understand the range of impacts that specific decisions may have.

The definition of net emissions must include removals from carbon capture and storage

33. The Bill's definition section states that "net emissions means gross emissions combined with emissions and removals from land use, land use change, and the forestry sector". We note that "removal" is also defined in the principal Act (the Climate Change Response Act 2002), and wish to ensure that net emissions includes carbon capture and storage (CCS) technology. CCS involves capturing emissions and injects them deep into underground reservoirs for permanent storage.

34. According to the Intergovernmental Panel on Climate change, CCS is essential to reducing net emissions, and the world cannot meet its Paris emission targets without it[10]. CCS is a present and affordable technology today. Around the world there 21 large-scale active projects including the Gorgon project in Western Australia.

35. We take this opportunity to note that New Zealand has no legislation that sets out an enabling CCS regime or specific consenting process. This uncertain and ill-defined framework led two detailed New Zealand reports to conclude that the Resource Management Act is not equipped to deal with the nuances of CCS. The two key reports are listed below and reach the stated conclusions.

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[9] Low Emissions Report (page 130). https://www.productivity.govt.nz/sites/default/files/Productivity%20Commission_Low-emissions%20economy_Final%20Report_FINAL_2.pdf

[10] IPCC Special Report: Global Warming of 1.5C Chapter 2: 2.6.3 Carbon Dioxide Removal (CDR) "Most 1.5°C and 2°C pathways are heavily reliant on CDR at a speculatively large scale before mid-century" p158.

- In Carbon Capture and Storage: Designing the Legal and Regulatory Framework for New Zealand[11] Barry Barton of Waikato University states CCS "is probably not actually possible at all under the existing law".
- The Productivity Commission's *Low Emissions Economy*[12] report considers that the current law "is not set up to deal with the complexities of CCS, and acts as a barrier to the uptake of these technologies" (page 449).

36. **Appendix 1** outlines the regulatory issues in some greater detail.

The case for enabling the Minister to require "lifeline utility providers" to provide climate change adaptation information has not been adequately made

37. The bill will the Minister for Climate Change the power to compel government organisations and "lifeline utility providers" (which includes gas producers and distributors[13]) to provide specified information. This information may relate to:
    - the organisations' assessments of the risks climate change poses to their functions; and
    - the organisations' proposals and policies for adapting to climate change and progress.
38. We are not inclined to support information-gathering powers being granted to a Minister of the Crown in relation to private enterprise without a compelling problem definition and intervention logic. We recommend this power be removed from the Bill at least in relation to non-state actors.

    Issues with the status quo not well defined

39. We are unaware of material issues with the status quo which would warrant such a new power.
40. Companies already have fiduciary duties, and this aspect of the status quo should be considered before presuming a move towards state action is required or appropriate. We especially note that many companies already make disclosures in line with TFCD (the Task Force on Climate-related Financial Disclosures framework).
41. We also note the Legislation Design and Advisory Committee's *Legislation Guidelines* which emphasise that legislation should only be used when it is essential and after non-regulatory solutions have failed - "Legislation should only be made when it is necessary and is the most appropriate means of achieving the policy objective."[14]
42. Before imposing regulatory requirements, we note that:
    - companies are already incorporating climate risk in to approaches;
    - companies are willing to acknowledge the wider societal responsibilities of lifeline business;
    - information can be resource intensive to obtain and commercially sensitive; and
    - costs on business should be fair and reasonable.

[11] https://www.waikato.ac.nz/__data/assets/pdf_file/0011/179570/University-of-Waikato-CCS-Report-2013-web.pdf
[12] https://www.productivity.govt.nz/sites/default/files/Productivity%20Commission_Low-emissions%20economy_Final%20Report_FINAL_2.pdf
[13] In full, lifeline utility providers in relation to petroleum include: "An entity that produces, supplies, or distributes manufactured gas or natural gas (whether it is supplied or distributed through a network or in bottles of more than 20 kg of gas.
[14] Chapter 2: LDAC Guidelines. http://ldac.org.nz/guidelines/legislation-guidelines-2018-edition/

43. We would be willing to facilitate a discussion with government on how our sector can collaborate on information sharing and disclosure, and also to share examples of how climate-related disclosures are currently made.

The scope of businesses captured

44. Noting that the lifeline utilities list is taken directly from the Civil Defence Emergency Management Act 2002, it is unclear why special reporting requirements should apply to certain companies in relation to this compared to the multitude of other companies who may also provide important services.

45. If the intention is to ensure that essential services are still able to be provided where they might be impacted by, for example, rising sea levels or coastal erosion, responsible companies with any such risk to their assets will have factored this into their asset management planning.

46. If the intention is to encourage greater participation in climate related financial disclosure initiatives, we do not consider this an appropriate legislative vehicle for achieving this. In addition, this provision would appear too narrowly cast to gain a useful set of disclosures.

47. We consider that the financial markets are best placed to determine the disclosure regimes that may be appropriate for entities seeking to raise capital or debt to support the operation of their business.

Improving the provision if it is to be retained

48. Lastly, should this provision ultimately *not* be removed, we recommend:

- materially broadening the definition to include all service and infrastructure providers who may be impacted by, for example rising sea levels, coastal erosion, etc. This should include those who provide roads, rail or other transport infrastructure fire and emergency services, food transport services, water delivery, animal welfare services, medical services, communications services and infrastructure, etc;
- inserting a statutory requirement for the Minister to consult before specifying regulations outlining requirements as enabled by new section 5ZV(1)(d); and
- providing exclusions from reporting for reasons relating to commercial confidentiality, legal privilege, or the fact that information is disclosed through other means (such as TFCD).

Appendix One: Further comments on the regulatory situation facing carbon capture and storage in New Zealand

Two key reports have considered the regulatory situation facing carbon capture and storage in New Zealand:

- *Carbon Capture and Storage: Designing the Legal and Regulatory Framework for New Zealand*, and
- The Productivity Commission's *Low Emissions Economy* report.

The Productivity Commission's *Low Emissions Economy* report and the Waikato University paper both recommend a bespoke CCS Act. The Waikato University paper states "*A close analysis of the RMA, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and the Crown Minerals Act 1991 produces the conclusion that none of those Acts is capable, either in its detail or its general architecture, of delivering the legal framework that is required for CCS*".

The main comments of the Commission and University include the following.

1. CCS is a 'removal activity' under the Climate Change Response Act. That means the removing entity (i.e. an operator of a suitable geological formation) could receive 1 ETS credit for every tonne of CO2 removed and stored (s64(1), CCRA).
2. However, that only applies where the capture and storage is related to a given operator's activities. So, if an operator were to store carbon on behalf of a third party, then that operator could not currently claim ETS credits.
3. One of the Commission's recommendations (R14.7) is to change the ETS Act so that an entity performing CCS (including capture) can receive ETS credits, regardless of whether or not that entity was the source of the CO2.
4. Like the Commission's R14.7 recommendation, the University paper recommends that the definition of 'removal activity' be wider than currently stated for CCS, i.e. that CCS be a removal activity "*whether or not the CO2 is from an activity that is required to surrender units*".
5. The Commission considers that the combined effect of the RMA, EEZ Act and Crown Minerals Act is not capable of delivering the legal framework required for CCS. In particular, the RMA was singled out for not being fit-for-purpose for CCS. For example, the RMA is not equipped to deal with the long-term liability required for CCS operations.
6. The University paper aligns with the Commission's findings on the RMA, stating "*The overall consequence appears to be that the positive effect of CCS on climate change cannot be taken into account (it is not a renewable energy project), but its possible negative effects on the environment more broadly can be. This could make it practically impossible to get consent for a CCS project…*"
7. To deal with this issue, the Commission recommends (R14.6) that a whole new piece of legislation, a CCS Act, be drafted to regulate CCS.
8. The University paper also considers that a new CCS Act is the preferred option. To clarify the interplay between any new CCS Act and current regimes like the RMA and EEZ Acts, the paper states (emphasis added) "*We conclude that new legislation should be enacted that specifically regulates the injection of CO2 for permanent sequestration, any subsequent leakage or migration, and exploration for storage formations. We propose that those matters will be removed from control under the RMA and EEZ Act, and will not require permits under them*" (Executive summary, page vii)

9. The University paper (page 57) recommends any new CCS Act apply only to the injection and storage aspects of CCS operations, but other CCS activities will likely still be covered by the RMA.

10. The University paper (page 49) concludes that permits for CCS cannot be issued under the Crown Minerals Act, as CCS is outside the definition of 'mining'. The University notes that the CMA does not prohibit CCS.