

Emissions reduction plan consultation
Ministry for the Environment
PO Box 10362
Wellington 6143

24 November 2021

SUBMISSION BY LAWYERS FOR CLIMATE ACTION NZ ON THE EMISSIONS REDUCTION PLAN

Introduction

- 1 Lawyers for Climate Action NZ Inc (**LCANZI**) is a non-profit group of over 350 lawyers. We advocate for legislation and policies to ensure Aotearoa New Zealand meets or exceeds its commitment under the Paris Agreement to achieve net zero carbon emissions as soon as possible and no later than 2050. More information about us can be found on our website: <https://www.lawyersforclimateaction.nz/>.
- 2 This submission responds to the Government's discussion document *Te hau mārohi ki anamata, Transitioning to a low-emissions and climate-resilient future (Discussion Document)*. We have not attempted to answer the 114 individual questions in the document. Rather, our comments address overarching issues about the legal requirements for the Emissions Reduction Plan (**ERP**) and the level of ambition required.
- 3 LCANZI is also a member of All Aboard Aotearoa Inc. (**AAA**) and supports the detailed submission by AAA on transport issues.

Summary

- 4 LCANZI supports the general direction of the Discussion Document and welcomes the range of excellent policy proposals it sets out. However, we have several fundamental concerns about the Document:
 - (a) While suggesting a number of promising individual policies, it does not set out any overall strategy to reduce domestic emissions in Aotearoa New Zealand at the scale and pace required to meet the demands of the climate emergency;
 - (b) The level of ambition in both the indicative budgets and the policies proposed to meet them is far too low and is not consistent with the purpose of the Climate Change Response Act 2002 (the **Act**) of contributing to the global effort to limit warming to 1.5C;
 - (c) With the exception of transport, the Discussion Document indicates a lack of detailed policy proposals or strategies for specific sectors, most notably agriculture;
 - (d) Unless the final ERP remedies these issues it will not meet the requirements of the Act, specifically, s 3(1)(aa) and s 5ZG, and we will not meet our climate goals.

Legal requirements for Emissions Reduction Plan

- 5 The ERP is a statutory document that the Minister is required to prepare under the Act. Section 5ZG of the Act requires the ERP to set out the policies and strategies for meeting the relevant emissions budgets and to include: sector-specific policies to reduce emissions and increase removals; a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change; 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 any other policies or strategies that the Minister considers necessary.
- 6 As well as meeting these base-line requirements, the ERP must also comply with the purpose of the Act under s 3(1)(aa) to “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.” To be consistent with the first limb of that purpose, in LCANZI’s view, the ERP must set out a strategy for reducing emissions within Aotearoa New Zealand at a scale and pace that is consistent with what is required at a global level to limit the global average temperature increase to 1.5° Celsius.

No overall strategy

- 7 The Discussion Document reveals that the Government has no overall strategy to reduce domestic emissions in Aotearoa New Zealand at the scale and pace required to meet the demands of the climate emergency and to contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels. This is deeply concerning. We do not have the luxury of continuing with business as usual or making incremental changes. There needs to be an urgent escalation of climate issues to the top of the priority list in every department and Ministerial portfolio, with a focus on achieving significant emissions reductions in every sector *before 2030*, and a major refocusing of resources across the whole of Government to ensure that the necessary policies are developed and implemented promptly and in an effective manner.

Not consistent with 1.5°C

- 8 The science tells us that in order to have a 50-66% chance of limiting the global average temperature increase to 1.5° Celsius we must reduce net carbon dioxide emissions by 40-58% below net 2010 levels by 2030 and reduce methane emissions by 11-30% by 2030 (see the IPCC’s *Special Report on Global Warming of 1.5°C* (2018)).
- 9 The Discussion Document states that the Government has made in principle decisions on the first three emissions budgets required under the Act and has in effect adopted the budgets recommended by the Climate Change Commission (with some adjustments to reflect updated information). These budgets do not require any reduction in net carbon dioxide emissions below net 2010 levels by 2030 and are not consistent with the emissions reductions which the IPCC has stated are necessary at a global level to limit warming to 1.5°C. Based on our calculations, under the proposed budgets, net carbon dioxide emissions would be two to three times *higher* in 2030 than they were in 2010. Therefore, in LCANZI’s view, if the final ERP follows the Government’s in principle decisions on the

first three emissions budgets as set out Discussion Document it will not be consistent with the purpose of the Act of contributing to the global effort to limit warming to 1.5°C.

- 10 The legal issues relating to the purpose of the Act and whether the Commission's budget advice is consistent with that purpose are the subject of a judicial review application by LCANZI against the Climate Change Commission and the Minister for Climate Change which is scheduled to be heard by the High Court in February. This submission reflects LCANZI's analysis and opinion on the effect of the Act. We acknowledge that the legal position will be determined by the Court in due course.
- 11 Subject to the Court's decision on the current judicial review application by LCANZI against the Climate Change Commission and the Minister for Climate Change in relation to the Commission's advice and the Minister's NDC decision, an ERP prepared on the basis of the Commission's advice may be held to be unlawful.

Lack of detailed proposals

- 12 We acknowledge that the Discussion Document is not a draft ERP and is not necessarily indicative of the final contents of the ERP. However, the lack of detail in many areas of the Discussion Document, and the fact that it identifies a significant gap between the estimated impact of policies quantified to date and the first budget, raises the question of whether the Government is on track to deliver an ERP that meets the requirements of s 5ZG with regard to sector-specific policies and a multi-sector strategy to meet the emissions budgets.
- 13 While we accept that this is a challenging task, it is two years since s 5ZG was introduced to the Act, and the final ERP must comply with it. It cannot leave the details for later. By way of example, in *Friends of the Irish Environment v The Government of Ireland* [2020] IESC 49 the Supreme Court of Ireland held that the climate action plan prepared by the Irish Government under its climate legislation was unlawful because it failed to provide sufficient specificity and significant parts were, in the words of the Court, "excessively vague or aspirational". The Court held that the plan failed to meet the requirements of the legislation because it did not enable the public to judge whether the plan was realistic and whether they agreed with the policy options.
- 14 Likewise, to comply with the requirements of s 5ZG, the final ERP must state, with specificity, how the first emissions budget will be met. It is not sufficient for the ERP to state that the Government is looking at options or undertaking further consultation. It must provide details of a strategy and policies that will ensure the budgeted emissions levels are not exceeded. That will require a higher level of ambition, detail, and more rapid implementation than the Discussion Document envisages.

Conclusion

- 15 LCANZI strongly supports urgent action to reduce emissions in Aotearoa New Zealand. In general, we support the proposals in the Discussion Document but we urge the Government to be much more ambitious, as the Act requires, and to treat the issue with the urgency and focus it requires. There is no more time to consider the best way forward. We need to take the hard decisions and start acting on them now.

A handwritten signature in black ink, reading "Jenny Cooper". The signature is written in a cursive, flowing style.

Jenny Cooper QC
President, Lawyers for Climate Action NZ Inc.