

30 November 2023

Hon. Simon Watts
s.watts@ministers.govt.nz

Hon. Nicola Willis
n.willis@ministers.govt.nz

Tēnā kōrua Ministers

Re: Briefing for the Incoming Minister and Associate Minister of Climate Change

Congratulations on your appointment as Minister and Associate Minister of Climate Change.

You have become Ministers at a critically important time as the window of opportunity to limit warming to 1.5°C above pre-industrial levels is rapidly closing. If emissions continue at current levels, we will exhaust the global carbon dioxide budget associated with 1.5°C warming before the end of this decade. History will look back at the next handful of years as the making or breaking of a safe and sustainable climate for the generations to come.

We acknowledge and welcome the Government's support for the 2050 net zero target and for meeting our emissions budgets (2022-2035). Meeting these domestic targets, together with our NDC commitment of a 50 per cent reduction in net emissions below gross 2005 emissions by 2030, will require urgent action on a number of fronts.

In this letter, we provide our perspective on the Emissions Trading Scheme and on meeting our climate targets in light of the climate related commitments in the National/ACT and National/NZ First coalition agreements. We would welcome the opportunity to meet and talk with you on these issues.

About Lawyers for Climate Action NZ

We write to you as the leaders of Lawyers for Climate Action NZ Incorporated (**LCANZI**). LCANZI was founded in 2019 to use the law to ensure more effective action in New Zealand against climate change. Our members include King's Counsel, barristers, solicitors, legal academics, and students. We have no vested interest other than seeing New Zealand contribute to the goals of the Paris Agreement in light of the science of climate change as expressed by the IPCC.

We seek to engage constructively, but we also accept a responsibility to take legal action where necessary. To date we have sought to test:

- whether the level of ambition in our climate settings complies with the requirements of the Climate Change Response Act (for example, our ongoing judicial review of the Climate Change Commission and the Minister of Climate Change);
- whether government decisions around the Emissions Trading Scheme (ETS) comply with the requirements of the Climate Change Response Act (for example, in our successful judicial review of the December 2022 settings);
- the integration of climate thinking in public decision-making and consistency between policy statements and action (for example, our involvement in the All Aboard Aotearoa case against Auckland Transport); and
- the validity of “climate-friendly” marketing claims (such as the Fair Trading Act claim filed this week jointly with Consumer NZ and the Environmental Law Institute in relation to Z Energy’s “we’re in the business of getting out of the petrol business” advertising campaign).

More information about LCANZI can be found on our [website](#).

Emissions Trading Scheme

The National Party has emphasised the importance of the ETS. For example, Prime Minister Christopher Luxon noted during campaigning that the ETS should do more of the “[heavy lifting](#)” in New Zealand’s climate response. While there are different views on the balance between generic policies such as the ETS and bespoke policy interventions, this is a reasonable approach to take.

However, as an approach, it relies on the ETS being “fit for purpose” which is not currently the case. In particular, current settings do not “cap” our net emissions, but rather put a price on emitting activity. Furthermore, the ETS incentivises emission removals through forestry, rather than emission reductions at source. While forestry is an important way of offsetting emissions which cannot otherwise be abated, reducing emissions at source is a much better outcome given the risks to forests (for example, disease and fire) and the permanent loss of that land being available for any other purpose. Furthermore, its inclusion within the ETS means that the unit price does not move high enough to incentivise serious transition activity (at say \$100-\$150) because conversions from farm land to forestry are profitable at much lower unit prices.

In this regard, we note the intention in the agreement between National/NZ First to “stop the current review of the ETS system to restore confidence and certainty to the carbon trading market”.

Whatever happens to the review, reform of the ETS remains essential. In particular, to make the ETS fit for purpose, we support urgent reforms to:

- address the current 144m unit stockpile;
- transfer decision-making in relation to the number of additional units to be made available by auction from the Minister to the Climate Change Commission (the risk of politically motivated decisions and the adverse impact on the carbon market was the motivation for our successful judicial review in [LCANZI v Minister for Climate Change](#) [2023] NZHC 1835);
- remove the 1:1 fungibility of units earned by forestry removals and surrender obligations; and
- provide a pathway for the inclusion of agricultural emissions if other policies prove ineffective.

Meeting our emissions budgets, the 2050 target and our NDC

Considerable effort will be required to meet our various climate targets.

In terms of emission levels generally, we note:

- the National/ACT agreement to “review the methane science and targets in 2024 for consistency with no additional warming from agricultural methane emissions”; and
- the shared intention to restart offshore gas exploration.

We would be very concerned about any reduction in our methane targets. Reductions in agricultural methane emissions are necessary to reduce New Zealand’s contribution to global warming. To claim that we are entitled to grandfather an existing contribution to global warming, as would be the consequence of adopting GWP*, is inconsistent with the IPCC global pathways which assume significant reductions in warming from methane and with the Global Methane Pledge which New Zealand is a signatory to. Furthermore, since our emissions budgets and NDC are set on an “all gases” basis, this would require other emission types to reduce more quickly than currently planned.

Continued exploration for fossil fuels is also concerning and risks creating stranded assets given the rapid decarbonisation required by the 2050 target and NDC. If the ban is repealed, then it should be replaced with a regime which ensures that any fossil fuel extraction does not exceed our anticipated domestic requirements for the period before 2050, given the projected rapid decline in fossil fuel use that sits behind our emissions budgets. Such a regime should be informed by the guidance of the International Energy Association on ongoing exploration.

In terms of the NDC, we note there is currently no clear plan on how the reductions beyond the ambition of our emissions budgets will be achieved.

Given our failure to tackle our gross emissions to date, New Zealand will have to rely significantly on offshore mitigation to meet the 2030 NDC. This will come at a considerable cost (and one which has not been budgeted for), and as the [Climate Change Commission has noted](#): “There is currently no clarity about when or how access to offshore mitigation will be obtained to meet the international component of the NDC, nor has the Government decided how the cost of offshore mitigation will be funded, or whether and how it will be allowed into the NZ ETS.” We consider the first priority and focus of investment should be on cutting domestic emissions, both to deliver social and economic co-benefits and to reduce our exposure to the potentially high cost of offshore mitigation.

Ensuring that New Zealand meets its international emissions commitments is critical. For completeness, we consider that downgrading New Zealand’s international emissions targets would be inconsistent with:

1. Our commitment under the Paris Agreement to “highest possible ambition” and “progression”.
2. The purpose of the Climate Change Response Act, which includes enabling New Zealand to meet its international commitments.
3. Once ratified, our obligations under the EU Fair Trade Agreement including our obligations to “effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to nationally determined contributions” and “not weaken or reduce the levels of protection afforded in its environmental ... law in order to encourage trade or investment.”

Next Steps

We look forward to engaging constructively with you as you grapple with these important and challenging issues. Aotearoa New Zealand has an opportunity now to accelerate our transition to a thriving decarbonised economy and show genuine leadership on the climate crisis.

We would very much like to meet with you to discuss ways in which New Zealand can take serious and positive action on climate change in accordance with the science and our domestic and international legal obligations. We appreciate that you will be very busy over the coming weeks, but please let us know in due course when a meeting would be possible. We are happy to meet in person in either Auckland or Wellington.

Yours faithfully

Lawyers for Climate Action New Zealand Leadership



Jessica Palairt (Executive Director)



Bronwyn Carruthers KC (President)

James Every-Palmer KC (Treasurer and Board Member)

Jenny Cooper KC (Board Member)

Sophie Meares (Secretary and Board Member)

Bjorn-Oliver Magsig (Board Member)

Cassandra Kenworthy (Board Member)

Debra Dorrington (Board Member)

Frankie McKeefry (Board Member)

Grant Hewison (Board Member)

Michael Sharp (Board Member)