

13 November 2020

**The Climate Change Commission**

Level 21, 1 Willis Street  
Wellington 6011  
PO Box 24448  
Wellington 6142

Dear Dr Carr and fellow Commissioners

**LAWYERS FOR CLIMATE ACTION NZ INC.**

1. Thank you on behalf of Lawyers for Climate Action NZ Inc (**LCANZI**) for the opportunity to meet with Dr Carr and Matthew Smith by Zoom on Friday 6 November 2020.
2. The purpose of this letter is to introduce LCANZI to the other members of the Commission, to record the key points from our discussion with Dr Carr and Mr Smith, and to offer any assistance that we might be able to provide to the Commission in carrying out the tasks ahead.

**Who We Are**

3. LCANZI is a group of over 350 barristers, solicitors, and legal academics who seek to use our legal skills and experience to advocate for legislation and policies to ensure New Zealand meets or exceeds its commitment under the Paris Agreement and achieves net zero carbon emissions as soon as possible and no later than 2050.
4. We believe that New Zealand can and should do more in the global fight against climate change— New Zealand has the opportunity to lead the world in this space as we have in the past on issues such as Women's Suffrage and Nuclear Disarmament. We want to make sure that New Zealand meets and exceeds its obligations under the Paris Agreement and that it does so in a way that is evidence-based, effective, and consistent with the rule of law, Te Tiriti o Waitangi, international law, and the New Zealand Bill of Rights Act 1990 (**NZBORA**).
5. As lawyers, our primary focus is on the use of legal frameworks and enforcement tools to mitigate climate change, both through the introduction of new laws and regulations, and also through new applications and/or more rigorous enforcement of existing laws and legal principles. We are following international developments in climate-related litigation closely, particularly recent

successful judicial review proceedings against governments for failure to adopt and pursue emissions reduction plans and policies consistent with the Paris Agreement.<sup>1</sup>

6. More information about LCANZI can be found on our website: [www.lawyersforclimateaction.nz](http://www.lawyersforclimateaction.nz).

### Hui Takeways

7. The korero at our Zoom hui with Dr Carr and Mr Smith focused on how the Commission is approaching the first emissions budget, emissions reduction plan, and review of the NDC. We also had some discussion on the Emissions Trading Scheme (**ETS**), and on the question of how methane emissions should be accounted for.
8. We were pleased to hear that the Commission is strongly committed to independence and a science-based approach. These are clearly vital requirements of the Commission's role. As expressed at our hui, the other key points we wish to convey to the Commission are:
  - a. The Commission has a unique role and opportunity to deliver a clear and unvarnished assessment to the people of New Zealand of what is required to do our part in the global effort to limit global warming to 1.5C. It is essential that it does not shrink from the task, no matter how challenging the message may be. People must be given the information they need, from a source they can trust, to make informed choices about how to respond to this crisis.
  - b. The Commission's recommendations on the emissions budget, emissions reduction plan, and NDC all need to reflect pathways consistent with the 1.5C target. As discussed further below, we consider that this is a mandatory legal requirement on the Commission under the Climate Change Response Act (**CCRA**).
  - c. It follows from the point above that the Commission's recommendations for the emissions budget and emissions reduction plan should not be based on the existing NDC, which the Government has acknowledged is not consistent with 1.5C pathways with no or limited overshoot.
  - d. We have strong reservations about the methodology in the Ministry for the Environment's paper on "Scientific Analysis of compatibility of the NDC with 1.5 degrees" (5 February 2020). In particular, it fails to address the gross inconsistency between a 2030 NDC target of 58.3 Mt CO<sub>2</sub>-e (based on the controversial gross/net approach) against the IPPC's requirement for global CO<sub>2</sub> emissions to decline by around 45% from 2010 levels by 2030 (which would be 33.5 Mt CO<sub>2</sub>-e for New Zealand). While we are not against a split-gas approach or a focus on total emissions over the decade for long-lived gases, this is a relevant and basic comparison that the paper fails to make. The Commission will also

---

<sup>1</sup> See for example, *Plan B Earth v Secretary of State for Transport* (Heathrow runway) [2019] EWHC 1070, *The Netherlands v Stichting Urgenda* ECLI:NL:HR:2019:2007 (Supreme Court of The Netherlands, 13 January 2020), *Friends of the Irish Environment v Ireland* [2020] IESC 49.

need to reach its own view as to whether it is legitimate to apply the gross/net approach in operationalising our NDC, whether New Zealand's share of global emissions in 2021-30 has been appropriately calculated, and whether it is appropriate to use interquartile ranges rather than means. We would be keen to explore these issues with you in more detail.

- e. Further, in order to meet our obligations under the Paris Agreement, the Commission's recommendations on the NDC need to reflect New Zealand's "highest possible ambition", having regard to its national circumstances. Thanks to its geographic position, natural resources, stable government, and (relatively) affluent and cohesive society, New Zealand is in a far better position than the vast majority of countries to undertake rapid decarbonisation. We can and should show leadership in both our targets and our actions.
- f. In a scenario where New Zealand sets, but fails to reach, an ambitious NDC and makes up the shortfall by purchasing international emission reductions, we do not consider this to result in a mere "wealth transfer" overseas. First, the prospect of such a financial penalty is a commitment strategy which increases the likelihood of introducing policies that achieve significant reductions in our emissions. Secondly, such payments will fund emissions reductions elsewhere and therefore reduce climate risks. And thirdly, the commitment to an ambitious NDC may increase the likelihood of other countries doing the same.
- g. The high level of ambition that is called for in relation to the NDC must in turn be reflected in the emissions budget and emissions reduction plan.

### **The Commission's legal obligations**

- 9. The Commission is a statutory organisation and, as such, must act in accordance with the purpose of its enabling statute, the CCRA. Accordingly, the Commission's role is defined by the purpose of the CCRA as set out in s3 of the Act. The first limb of that purpose is to provide a framework for policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels (s3(1)(aa)(i)). The purpose of the Act also includes enabling New Zealand to meet its international obligations under the Paris Agreement (s3(1)(a)).
- 10. As expressly stated in s3(2) of the CCRA, everything that is done under the Act must be done in a manner that is consistent with its purpose. This includes the advice and recommendations provided by the Commission.
- 11. The same purpose of providing a framework for policies that contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels is noted again, specifically in relation to emissions budgets, in s5W of the Act. We note also that s5ZC(2)(b)(xi) requires the Commission, when preparing advice on an emissions budget, to have regard to New Zealand's international obligations.

12. Therefore, in producing its recommendations the Commission needs to ensure that they are consistent with not only the 2050 target, but also with New Zealand doing “its share” of the work to keep global warming below 1.5C. This is not only sound policy, but a legal requirement, in our view.
13. We thank you again for the hui, and would greatly welcome the opportunity to meet with you to discuss these issues further as the Commission further develops its approach towards its first tranche of advice and recommendations. If there is anything we can do to assist the Commission in its work, please do not hesitate to let us know.
14. We conclude by again urging the Commission to be bold. If anything positive comes from the experience of 2020 it is the evidence that New Zealand can react, it can adapt, and it can lead the world. We must seize the opportunity.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jenny Cooper', written in a cursive style.

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