

ENVIRONMENT

REAL ACTION, NOT EMPTY WORDS

How to make the Zero Carbon Bill
about cutting emissions

Matt Burgess

A large stack of papers is shown from a low angle, creating a sense of depth and perspective. The papers are slightly blurred, suggesting a large volume. A white rectangular box is overlaid on the bottom center of the stack, containing text.

**THE
NEW ZEALAND
INITIATIVE**

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... if you are Minister of the Environment, you are eventually Minister of Everything.

Professor Aaron Wildavsky, Berkeley School of Public Policy¹

**THE
NEW ZEALAND
INITIATIVE**

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About the New Zealand Initiative

The New Zealand Initiative is an independent public policy think tank supported by chief executives of major New Zealand businesses. We believe in evidence-based policy and are committed to developing policies that work for all New Zealanders.

Our mission is to help build a better, stronger New Zealand. We are taking the initiative to promote a prosperous, free and fair society with a competitive, open and dynamic economy. We are developing and contributing bold ideas that will have a profound, positive and long-term impact.

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**You have stolen my dreams and my
childhood with your empty words.**

**If you really understood
the situation and still kept on failing to act,
then you would be evil.**

**If you choose to fail us, I say:
We will never forgive you.**

Greta Thunberg, UN Summit, 2019

This is a report about how New Zealand can maximise its contribution to reducing global emissions of greenhouse gases in the fight against catastrophic climate change.

It is based on four assumptions:

1. Climate change is real and potentially cataclysmic
2. It is caused by human beings' greenhouse gas emissions
3. Only urgent action will deliver the world's objectives outlined in the Paris Agreement
4. Any New Zealand Government will want to at least meet New Zealand's international obligations to reduce emissions – and ideally exceed them.

Sadly, the report finds that, as drafted, the New Zealand Government's Zero Carbon Bill will make only a derisory contribution to reducing emissions. It would stop

New Zealanders from supporting the best global programmes to fight climate change. In a phrase, the Bill is New Zealand failing to act. At the same time, the Bill is set to impose enormous costs on New Zealand families. It is the worst of all worlds.

Fortunately, the Bill is easily fixable.

We propose three amendments that would not merely double or triple New Zealand's proposed contribution to the fight against climate change but could increase it 20-fold over what is proposed in the current Bill. It would avoid the dangers and certain failure of relying on grand plans from Cabinet Ministers to meet our climate objectives. And it would mean New Zealanders can do the most to reduce and sequester greenhouse gas emissions.

It would be New Zealand's best response to the global calls for action.

Executive Summary

New Zealand could be a leader in global emissions reduction. We could lower global emissions by far more than we contribute. We could achieve net zero emissions sooner than 2050. We must simply be prepared to do what works by partnering with or funding the best sources of emissions reduction and removals wherever they are in the world. That might be re-planting the Amazon, capturing carbon in British Columbia, building solar farms in outback Australia, or planting trees in Northland. Lower emissions depend on the effectiveness and integrity of emissions schemes, not their location.

But New Zealand is about close the door on global leadership. The Climate Change Response (Zero Carbon) Amendment Bill, the framework for New Zealand's emissions reduction through to 2050 and the most expensive legislation in the country's history, is being rushed through its final stages in Parliament. Emissions must be reduced domestically "as far as possible," says the Bill, regardless of how many more tonnes of greenhouse gases could be avoided offshore. Such parochialism has consequences: \$300 billion potentially added to the cost of reducing emissions to net zero; national income as much as 6% lower in 2050; a drastic reduction in New Zealand's ability to influence global emissions; and the near-certain failure to achieve our emissions targets. In short, higher emissions and a material fall in living standards. Whatever the moral case for reducing emissions on this side of the border, it should be weighed against the real impact of forgoing international co-operation on the environment.

Worse, the Zero Carbon Bill gives priority to central planning over New Zealand's Emissions Trading Scheme as a way to reduce emissions. The Bill requires the Minister for Climate Change to plan how and where emissions will be reduced.

The plan may include any policy the Minister considers necessary, covering every sector of the economy, at any level of detail the Minister decides, and can be changed any time. The Bill requires only that the Minister's policies are for a purpose of reducing emissions, but never requires policies are checked. Thus, the Minister's plan is essentially unconstrained – policies with only a tangential link to emissions can be included.

One piece is missing from this puzzle. Currently, the Bill provides no mechanism to enforce the Minister's plans. Without enforcement, the Zero Carbon Bill has no way to turn advice, targets, budgets and plans into lower emissions. The government has not yet said how it intends to bridge this gap. Why require a Minister to prepare an emissions reduction plan if it will not be enforced? Perhaps the government intends only that these plans signal the future direction of policies, with each policy given effect through a separate Act of Parliament. Another possibility is that a future government, faced with non-compliance with its unenforced plans and a widening gap between actual and target emissions, could seek an amendment to give effect to the Minister's plans directly through regulation, without separate legislation. Were that simple amendment to pass, it would effectively give the Minister for Climate Change sweeping powers over every part of the economy beyond Parliament's scrutiny. The government has said its goal is to transform the New Zealand economy through planning.² The Zero Carbon Bill is one short step away from creating the vast powers that will be necessary to achieve that goal.

Such power has precedent in New Zealand. Ministers held similar powers under the *Public Safety Conservation Act 1932*, which was abused during the 1951 Waterfront Strike, and the

Economic Stabilisation Act 1948, which was abused in the late 1970s and 1980s. Just as these Acts delivered opposite outcomes to those intended by the parliaments that enacted them, the Zero Carbon Bill's reliance on planning could end up raising New Zealand's emissions. History suggests that once Parliament delegates extraordinary powers to the Executive, future governments will find it politically useful to retain them. It could take another economic crisis before those powers are finally removed. This issue has yet to attract material public and media attention because there is no visible enforcement power.

We propose three simple amendments to the Zero Carbon Bill that will give priority to emissions reduction and neutralise the Bill's constitutional risk. The amendments we propose are:

1. Require effective action by introducing an overarching objective for both the Minister and the Commission that requires **exercising their powers for "effective and efficient" emissions reductions and removals.**

2. Remove section 5W to eliminate the domestic preference, **allowing emissions reduction through the most effective combination of domestic and offshore mitigation.**
3. Remove sections 5ZD–5ZF to **eliminate the requirement that the Minister for Climate Change plan emissions reduction.** The Commission and the Minister will be free to prepare plans, and give effect to them by way of Acts of Parliament, the appropriate level of scrutiny for such far-reaching powers.

These three amendments will make the Zero Carbon Bill about cutting emissions. They could increase New Zealand's contribution to global emissions reduction by a factor of 20. Without them, the Zero Carbon Bill will be a costly but ineffective exercise. It will amount to little more than empty words.

CHAPTER 1

The clothes do not fit

The government's flagship environmental legislation, the Zero Carbon Bill, began life as a commitment in the confidence and supply agreement that brought the Green and Labour parties to power after the 2017 general election. Since then, the government has made climate change a priority. The Prime Minister has said “[c]arbon is the most important thing we need to tackle”;³ and that climate change is “a matter of urgency”.⁴ During the election campaign, Jacinda Ardern called climate change “my generation's nuclear-free moment”.⁵ Two Ministers have called it the “climate crisis”.⁶ The Zero Carbon Bill passed its first reading 119 votes to 1, reflecting a consensus for action in Parliament. It is the most expensive piece of legislation in New Zealand's history.

The Bill will do three main things
The New Zealand Initiative supports.

1. It will put the government's 2050 emissions target into legislation.⁷
2. It will create a permanent new agency, the Climate Change Commission (the Commission), to monitor emissions reduction and advise the government on policies and targets.
3. It will require the government to prepare mitigation and adaptation plans, and introduce reporting requirements for public, and some private, entities.⁸

Key elements of the Bill are in the Appendix of this report.

The government has wisely sought to minimise the disruption to the economy brought about by emissions reduction. The Bill requires publication of economy-wide caps on the quantity of

emissions, called “emissions budgets”, years before coming into effect to give certainty to businesses and investors.⁹ Emissions budgets will be set by the Minister for Climate Change, and each will last five years. The Bill adds further certainty by making it hard to change emissions budgets after they are set – changes are allowed only under certain conditions using a complicated procedure. The Bill's authors clearly recognise the value of clarity and stability, and the importance of policy credibility when dealing with a long-term problem like climate change.

So far, so good. But the Bill also includes rules for how emissions should be reduced, and this is where it becomes distracted from its goal of lower emissions. For example, rather than allow discovery of what works best, the Bill requires a planning approach to emissions reduction regardless of how well market alternatives like the Emissions Trading Scheme (ETS) are working. Nowhere does the Bill, or the legislation it amends, require individual emissions policies to be effective, let alone efficient, relative to other policies. Despite a heavy emphasis on the collection and use of data, the Bill never requires individual policies to be assessed for their effects on emissions, an obvious task for the Climate Change Commission.

But the worst rule concerns where emissions must be reduced. Here, the economic disruption becomes very deep. When the Minister for Climate Change sets emissions budgets, section 5W of the Bill tells the Minister where to reduce emissions:

5W How emissions budgets to be met

(1) Emissions budgets must be met, as far as possible, through domestic emissions reductions and domestic removals.

“As far as possible” could refer to physical limits, or be designed to leave room for the Minister to calibrate budgets to maintain majority support in Parliament for emissions reduction, or both. But it definitely does not refer to the relative performance and scale of domestic versus offshore emissions reduction opportunities or the risk of leakage, according to the text of the Bill and comments by officials in the Regulatory Impact Statement (RIS).¹⁰ And the government has given every indication this rule will be keenly observed. Offshore schemes will be available only “in very limited circumstances”, say officials at the Ministry for the Environment.¹¹ In practice, section 5W means that “as far as possible” 1 tonne of domestic mitigation must be preferred even if, for the same investment, 10 or 100 or 1,000 tonnes of emissions could be cut offshore.¹² In effect, section 5W embeds the principle that New Zealand should pay as much as possible to achieve net zero emissions.

Whatever moral goodness one takes from reducing emissions domestically, those feelings should be weighed against its profound consequences. The 16 words of section 5W could add more than \$300 billion (in 2018 dollars) to the cost of achieving net zero emissions by 2050, according to analysis commissioned by the Ministry for the Environment.¹³ That is the potential cost of using only domestic sources. Carbon prices could top \$2,000/tonne, and annual household incomes in 2050 could be cut by as much as \$16,000, according to the commissioned study.

These enormous costs do not reflect any intrinsic difficulty in reducing emissions. They are the product of policy – in this case, the decision to forgo opportunities to reduce emissions through projects that happen to be located offshore. In the end, these huge costs will mean fewer emissions reductions and higher emissions than could otherwise be achieved.

There will be many good ways to reduce emissions from New Zealand sources, but it

is not remotely plausible that all the world’s best emissions programmes are in a country responsible for only 0.17% of the world’s emissions. There will also be opportunities to cut vast quantities of emissions from the 99.83% of global greenhouse gases not emitted from this side of the border.

Some of those opportunities could be extraordinary. Consider Cool Earth, a charity that takes greenhouse gases from the atmosphere by restoring Amazon rainforest. Cool Earth may offer one of the most effective sources of emissions reduction on the planet. According to an independent estimate, Cool Earth can take 1 tonne of carbon from the atmosphere for as little as US\$1.34. At that cost, New Zealand could achieve net zero emissions for \$118 million per year, just 0.04% of our GDP in 2018.¹⁴ For 0.5% of GDP, New Zealand could reduce global emissions by around 12 times of our net domestic emissions, equivalent to the net emissions of South Korea. For 0.75% of GDP we could cover Germany’s net emissions. The current rate for well-certified emissions offsets overseas is US\$10–\$15/tonne. Domestic emissions policies, by comparison, generally cost hundreds of dollars per tonne. If New Zealand is prepared to do what works rather than do what is local, there is no reason to stop reducing emissions at net zero.

Two caveats are in order. First, New Zealand should only be dealing with genuine offshore schemes that are independently certified. It is encouraging to see New Zealand taking a lead in developing accounting standards under the Paris Agreement.¹⁵ Second, the high cost of domestic emissions reduction at least partly reflects the cost of throwing away existing infrastructure and assets midway through their lives. If New Zealand leaves the door open to offshore projects, it seems likely we will initially lean quite heavily on offshore emissions reduction. Over time, however, as domestic assets reach the end of their lives and can be replaced with low emissions alternatives at more affordable costs, and as

other countries ramp up their emissions efforts, New Zealand emissions efforts will gradually migrate home. “Writing a cheque” in the short term does not mean writing cheques forever.

To summarise this chapter, the Zero Carbon Bill sets emissions targets but then throws sand at the gears by blocking access to offshore opportunities. For a small country trying to deal with a global problem, the only possible result of insisting on domestic reductions is less emissions reductions and higher emissions than otherwise. Whatever pride comes from reducing emissions at home, it comes at an environmental cost that is too high if it stops more effective emissions reduction projects offshore. The world needs to maximise emissions reductions free from nationalistic concerns. This is the basis on which

the Kyoto Protocol and the Paris Agreement were built. New Zealand could achieve radical cuts in global emissions, meet its international obligations, and get to net zero far sooner than 2050 for a fraction of the cost just by keeping the door open to offshore opportunities. Instead, the Zero Carbon Bill embodies the extraordinary principle that it is better to reduce emissions by shutting down New Zealand farms and businesses than by finding the best solutions wherever they are in the world.¹⁶ New Zealand will probably never reduce its emissions to net zero under the Zero Carbon Bill, which needlessly insists on taking each tonne of greenhouse gases from the atmosphere at perhaps 20 to 100 times the cost of alternatives. Something else is going on.

CHAPTER 2

What the Zero Carbon Bill is really about

The Bill aims to support New Zealand's domestic transition to a low-emissions economy.

EXPLANATORY NOTE TO THE ZERO CARBON BILL, P. 6

Over the past two years since we took office New Zealand has produced our own Zero Carbon legislation, which puts our domestic economic transformation in line with the objective of a 1.5°C limit in global temperature increase.

JACINDA ARDERN, SPEECH TO UN GENERAL ASSEMBLY, 25 SEPTEMBER 2019

We must reduce the emissions 100 percent... that requires a change in lifestyle, a change in the economic model

HUGO CHAVEZ, 2009¹⁷

The government has turned the Zero Carbon Bill into the most expensive legislation in New Zealand's history, and torpedoed any real chance of meeting its emissions targets, by including unnecessary and deeply counterproductive rules for reducing emissions. Our task is to understand why.

Our first clue lies in section 5ZD of the Bill. This section gives the Minister for Climate Change a toolkit that could be used to control where and how emissions are reduced within New Zealand.

5ZD Requirement for emissions reduction plan

- (i) The Minister must prepare and publish a plan setting out the policies and strategies for meeting an emissions budget.

...

- (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
- ...
- (d) any other policies or strategies that the Minister considers necessary.

The scope of this planning function covers every sector of the economy, and the Bill places no limits on how much detail the Minister for Climate Change can put into each plan (an important matter we shall return to). That implies the Minister will be given the means to direct every aspect of domestic reduction efforts. But of course not those offshore. Thus, section 5W, which, as we noted in Chapter 1, requires domestic emissions reduction “as far as possible”, will massively increase the amount of activity regulated by the planning powers in section 5ZD.¹⁸

The government has been clear it intends to use these new powers to transform – or ‘transition’ – the New Zealand economy. The explanatory note to the Zero Carbon Bill includes many references to transition, for example:

2050 emissions reduction target: to signal an economy-wide transition... A system of emissions budgets will help to manage the transition to a low-emissions New Zealand... [The Bill] will allow governments to adhere to the optimal transition pathway and manage any adverse impacts of the transition to a low-emissions economy.

The government is nothing if not ambitious with its Zero Carbon Bill. But it is not yet clear exactly what the government has in mind with transformation. The government has been careful to offer no specifics. The broad idea, it seems, is to replace most domestic emissions sources with low or zero emissions alternatives, or eliminate those sources entirely. Ministers have previously shown interest in various policies, including banning the import of all fossil fuelled vehicles, 100% renewable electricity, a single buyer model for electricity,¹⁹ and substantially lower dairy production. With the addition of only a few words, the Zero Carbon Bill could become a vehicle for all these policies (see Chapter 3).

Transformation explains why the Zero Carbon Bill blocks offshore schemes as far as possible. It takes enormous power to transform an economy. Transformation does not come cheap. Transformation in the name of emissions reduction cannot occur if emissions obligations can be met through lower-cost sources. Removing access to offshore mitigation is therefore necessary if the government is to meet its transformation objective, even though blocking offshore access is at the expense of greater reductions and higher emissions. Transformation, not emissions reduction, is thus the true objective of the Zero Carbon Bill.

Officials at the Ministry for the Environment advised the government it could maximise emissions reduction or it could force transformation, but it could not do both. The analysis by officials is revealing (RIS, p. 67):

Allowing for the use of international units may be desirable as, in theory, it would substitute a certain portion of domestic action to meet the target at a lower cost, while abating equivalent amounts of GHGs from the atmosphere. Therefore, international units allow countries to:

- set deeper targets
- achieve targets earlier than might otherwise be possible
- reduce the economic impact of achieving a target

The use of international units can also be a way to help manage the inherent uncertainties of committing to an emissions reduction target ...

Arguably however, **emitters will be less inclined to bear the cost of reducing actual emissions if these can be offset more cheaply through trading of international units. This can result in a delayed transition ...** [emphasis added]

In other words, effective emissions reduction is a problem when it gets in the way of transforming the domestic economy.

If the government is to transform the economy under the guise of emissions reduction, it will be necessary for the Minister's emissions reduction plans to be implemented. As currently drafted, the Bill contains no implementation powers. Yet if the plans are to be effective in transforming the New Zealand economy, implementation powers will be needed. If a future government were to propose such powers, the legal framework adopted by the Zero Carbon Bill requires only powers exercised under the Bill are used for a broad purpose of reducing emissions. At no point does the Bill require the Minister to demonstrate the effectiveness of policies, nor does it require the Commission or some other independent body to evaluate individual policies for their effects on emissions.²⁰

This lack of accountability to Parliament or the public for emissions reduction plans (and any future implementation powers) is crucial. Accountability for the emissions effects of each policy would impose a degree of discipline that would prevent the Zero Carbon Bill from being used as a vehicle for anything other than

effective emissions reduction. The effects of emissions policies can be counterintuitive after their downstream effects are taken into account. For example, the government's 100% renewables policy was recently shelved after independent (and unwanted) evaluations showed the policy would raise power prices and could increase emissions. Relatively few ideas for reducing emissions survive scrutiny against competing alternatives. Fewer still will survive if their goal is economic transformation with lower emissions only as a side benefit.

In summary, the effect of blocking the use of offshore emissions reduction "as far as possible" is to take away the chance for New Zealand to have any real impact on global emissions, contrary to the stated purpose of the Zero Carbon Bill.

However, removing offshore access is necessary to create sufficient power to compel the transformation of the New Zealand economy. Transformation is not necessary to achieving our emissions targets – indeed, transformation is directly contrary to that goal. The government's decision to pursue transformation at the expense of lower emissions reveals transformation as the true objective of the Zero Carbon Bill. The government has not hidden its transformation goal. Instead, it has passed off transformation as necessary for reducing emissions when it is not.

CHAPTER 3

Silence on how emissions reduction plans will be enforced

Most people will be disturbed by the idea that the most expensive legislation in New Zealand's history will *prevent* New Zealand from maximising its contribution to fighting climate change. Even greater concerns might be directed at the attempt to unnecessarily transform the New Zealand economy under the guise of emissions reduction. But perhaps the worst aspect of the Zero Carbon Bill could be yet to come.

The Zero Carbon Bill is a planning framework that presages vesting in executive government the power to direct every part of the New Zealand economy through emissions reduction plans. As drafted, the Bill requires the Minister for Climate Change to plan how emissions will be reduced. As we noted, plans may cover every sector in the economy and the Bill puts no limit on the level of detail in each plan. Nor does the Bill oblige equitable treatment of different sectors in plans, or treatment in proportion to each sector's emissions or potential to reduce emissions. Those judgments are left to the Minister.²¹ The Minister's planning rights are considerably amplified by section 5ZF, which states:

5ZF Minister to prepare and publish emissions reduction plan

...

- (3) The Minister may, at any time, amend the plan and supporting policies and strategies to maintain their currency

However, the Bill is silent on how the Minister's plans will come into effect. Given the enormous costs of domestic emissions reduction and transformation, the Zero Carbon Bill will not

deliver the government's objectives without the power to enforce emissions reduction plans. Besides planning, the Bill has no mechanism for translating emissions budgets into action by individual households and businesses. Second, it is not clear what purpose is served by the Bill *requiring* the Minister to prepare plans if there is no intention to enforce them. If there is no intention to enforce the Minister's emissions reduction plans, the Bill loses nothing by leaving plans unmentioned. The Minister would be free to seek advice from the Commission, then prepare plans if he or she chooses. Compliance would require an Act of Parliament. It is hard to see why the Bill would require the Minister to prepare plans if there is no intention to enforce those plans.

This leaves a troubling concern that enforcement powers could be introduced in a late amendment to the Zero Carbon Bill, or a subsequent amendment of the Act. Backing the economy-wide scope of planning rights in the Bill as it is currently drafted with the power to enforce those plans would re-establish the type of sweeping powers last wielded by Prime Minister Sir Robert Muldoon to bring the New Zealand economy to its knees. The Zero Carbon Bill could become the most important constitutional reform in more than 30 years, and the most dangerous in 70 years.

New Zealand's history suggests we should be wary of granting effectively sweeping powers over the economy to the Executive. The *Public Safety Conservation Act 1932* allowed Cabinet to declare an emergency when public safety was threatened in the Cabinet's view. Once an emergency was declared, the Act allowed the Executive "to make

all such regulations as he thinks necessary for the prohibition of any acts which in his opinion would be injurious to the public safety". During the 1951 Waterfront dispute, the Executive used – or more accurately abused – its powers under the 1932 Act to seize union funds, replace workers with armed forces, and prohibit meetings or publications relating to the dispute.²² The Act having delegated power of regulation meant the Executive could bring in these draconian policies without troubling Parliament.

The *Economic Stabilisation Act 1948* similarly granted wide powers of regulation to the Executive (section 11):

The Governor-General may from time to time, by Order in Council, make such regulations... as appear to him to be necessary or expedient for the general purpose of this Act [economic stabilisation] and for giving full effect to the provisions of this Act and for the due administration of this Act.

Beginning in 1949, successive governments made extensive use of these powers, affecting almost every area of life.²³ More than 200 regulations were made using the 1948 Act.²⁴ During the oil shocks of the 1970s, the Executive used the Act to bring in car-less days, and later to freeze wages, prices, rents and "just about everything that moved".²⁵ Muldoon is reported to have said of the Act: "You can do anything provided you can hang your hat on economic stabilisation".²⁶ He was right. The courts upheld the extraordinary powers granted to the Executive, except in rare cases where regulation conflicted with a statute. In practice, Muldoon could rule by decree.²⁷

But what makes the potential reintroduction of sweeping powers of regulation so dangerous is that once Cabinet is granted those powers, governments find it in their interest to keep them. It took nearly 40 years and a financial crisis before the *Economic Stabilisation Act*

was repealed. Political parties opposed the Act when in Opposition but failed to remove the Act once elected. For much of its time in Opposition, Labour's policy was to repeal the *Economic Stabilisation Act*. Yet the second (1957–60) and third (1972–75) Labour governments did not follow through, and in fact used the Act to issue further regulations.²⁸ National demanded the Act's repeal almost immediately after returning to Opposition in 1984.²⁹ The Fourth Labour Government finally repealed the Act near the end its first term.³⁰ To be fair, it was first necessary to remove more than 200 regulations before the Act itself could be repealed. But these powers tend to stick, so even if the Ardern government's intentions are pure, what of the next few governments?

There is good reason to doubt concentrating enormous powers in the hands of politicians – who are never more than three years from an election – will work out for the environment. Muldoon took highly controversial steps under the cover of powers granted for economic stability, which turned out to be of dubious merit in terms of that objective. Political leaders have already found it necessary to shelter certain constituencies from emissions policies. That protection will only increase as efforts to reduce emissions ramp up, with the end result being widespread logrolling policies at huge cost for little if any reduction in emissions. The great significance of climate change justifies not concentrating power in so few hands, at least not without the discipline of accountability for how decisions affect emissions.

Parliament's scrutiny has value as a check on executive power. Nearly 20 years after its repeal, Sir Geoffrey Palmer had this to say about the *Economic Stabilisation Act*:³¹

The Economic Stabilisation Act 1948 lasted until 1987 and exerted a malign influence on the health of the New Zealand Parliament by allowing regulations to be made on prices,

wages and other aspects of economic activity.
It rendered Acts of Parliament an unnecessary
step in accomplishing the most draconian
regulation of the economy.

Is New Zealand about to see the return
of unlimited executive power and the
circumventing of Parliament and democracy?

CHAPTER 4

Reassessing the Zero Carbon Bill

Let us now reconsider the Zero Carbon Bill through the lens of economic transformation with Cabinet at the centre of decision-making. To give effect to transformation, the Bill creates a system with two main parts:

1. create pressure for action, and
2. give effect to action.

The Climate Change Commission is at the centre of the system for creating pressure. Its essential job is to raise demand for further action. It will do this by maintaining public awareness of climate change, and by regularly issuing reports that show a gap between target and actual emissions. Among the Commission's functions, those most relevant to creating pressure for action are:

- publishing an annual report on progress towards meeting emissions budgets and the 2050 target, and the adequacy of the emissions reduction plan;
- reviewing the 2050 target and, if necessary, recommend changes;
- advising the Minister on setting and changing emissions budgets; and
- providing other reports requested by the Minister.

Each year – more often if the Minister requests it – the Commission will produce a report that measures the gap between actual and required emissions. Although a target of net zero emissions in 30 years is perfectly achievable using the full range of mechanisms under the Paris Agreement, the target is made prohibitively expensive and effectively impossible by the rule that requires domestic emissions reduction “as far as possible”. Accordingly, the Commission's

reports will reliably find a large and widening gap between actual emissions and the track to net zero emissions in 2050. The conclusion of each review, whether stated by the Commission or by the government in its response to the Commission's review (which the Zero Carbon Bill requires), is that “more action is needed”.

As previously noted, transformation takes power, so the government wants the Commission's advice to create maximum public pressure for action. One way to do this is to surround the Commission with excellent public processes so its words carry maximum weight in the minds of the public. The Zero Carbon Bill provides excellent due process protections for the Commission: it expressly protects the Commission's independence (section 5N); high-quality processes govern appointments to the Commission and the setting of emissions targets and budgets; and provisions support transparency and accountability to Parliament. These statutory processes offer genuine protection from interference that will add legitimacy to the Commission's advice. The Commission's permanence adds further weight. Together, these arrangements mean the Commission will create strong pressure for action.

Cabinet is at the centre of the system for giving effect to action. As we have previously described, the key elements of the Zero Carbon Bill that support action by Cabinet are:

- **Section 5ZD** requires the Minister to prepare sector-specific plans for how emissions will be reduced. Plans may be changed any time. This gives Cabinet control over every detail of domestic emissions reduction (Note: the Bill is yet to say how plans will come into effect).

- **Section 5W** requires domestic emissions reductions and removals “as far as possible”. This rule massively increases the power of plans in section 5ZD by increasing the quantity of resources that are subject to Cabinet’s plan, a product of 1) increasing the share of emissions reduction that occurs in New Zealand, within the reach of planning, and 2) a higher per/tonne cost of reducing emissions.
- **Weak checks on Cabinet actions.** Actions must only be for a purpose of reducing emissions, but there is no requirement in the Zero Carbon Bill that actions are effective or efficient at reducing emissions, nor does the Bill require evaluations of individual policies. Effectively, the Bill could authorise almost any action Cabinet chooses, provided there is some connection to emissions.

Together, these three aspects of the Bill may be used by a future government to argue that Cabinet should have the power to direct any part of the economy under a guise of reducing emissions. Yet the framework of the Zero Carbon Bill provides insufficient accountability to prevent such powers being used towards objectives only tangentially linked to emissions reduction.

Some concluding comments on this system in the Zero Carbon Bill. First is the stark difference in due process protections between the system for creating pressure versus the system for giving effect to actions. Every aspect of the Commission’s functions is wrapped in high-quality processes. In contrast, there is virtually no process at all for Cabinet’s all-important planning function. The Zero Carbon Bill

provides due process precisely where it supports Cabinet’s empowerment while withholding due process in places it could get in Cabinet’s way. The process for writing emissions reduction plans makes only one real nod to due process – the requirement that the Commission consult the public before it advises the Minister on policy direction. Although Cabinet’s planning function could benefit from the clout that comes from due process, that would be at the cost of constraining Cabinet’s powers, and could even introduce accountability for reducing emissions. That would prevent the Zero Carbon Bill being a vehicle for transformation or anything else – except reducing emissions.

Second, the Commission’s measurement function appears calibrated so as to measure just enough to create pressure for action, but not so much that Cabinet becomes accountable for the emissions effects of each of its policy measures in pursuit of its plans.

Third, the Commission’s statutory independence is genuine, which creates a risk that the Commission may start evaluating individual policies even though that is not specifically authorised by the Bill. Or perhaps the independent Commission could form a view that parts of the Minister’s emissions reduction plan is inadequate in the sense of not being sufficiently focused on emissions and some policies should be removed. The Bill does not expressly rule out these possibilities, and they threaten transformation if the findings are politically embarrassing. One feature of the Bill reduces this political risk. Under the Bill, the Minister has the option of asking the Commission to evaluate specific policies using section 5K, thereby reducing its capacity to explore more politically sensitive aspects.

CHAPTER 5

Three changes to focus on emissions

Three simple changes can fix the Zero Carbon Bill. They establish accountability for delivering lower emissions to prevent its powers from being misused, remove the future pressure to create unnecessary enforcement powers, and remove the domestic bias for achieving net zero emissions. These changes reflect an overarching principle that the Zero Carbon Bill should authorise only those actions that can be expected to effectively reduce emissions.

The three changes are:

1. **Require effective action** by introducing an overarching objective for both the Minister and the Commission that requires exercising their powers for “effective and efficient” emissions reductions and removals. That objective places an obligation on the Minister and the Commission to show their actions contribute or can be expected to contribute to lower emissions and, importantly, in ways that are competitive with alternatives in effectiveness terms. That obligation will encourage decision-making to be supported by defensible analysis, and protect the powers granted by the Zero Carbon Bill from being inappropriately used. New Zealand should take the shortest path to lower emissions and avoid unnecessary public spending, especially with so much at stake.
2. **Remove section 5W** to eliminate the domestic preference, allowing emissions reduction through the most effective combination of domestic and offshore mitigation.
3. **Remove sections 5ZD–5ZF** to eliminate the requirement that the Minister for Climate Change plan emissions reduction. The Commission and the Minister will be free to prepare plans, and give effect to them by way of Acts of Parliament, the appropriate level of scrutiny for such far-reaching powers.

An additional change could further support effective action:

1. **Require independent evaluation of individual policies and initiatives for their effects on emissions:** To the Commission’s functions, add the evaluation of specific policies and initiatives for their actual (or expected) results on emissions effectiveness in reducing emissions. Expressly reserve to the Commission – not the Minister – the right to choose what is evaluated, and require all evaluations to be published.

Conclusion

New Zealand is about to burn down its own house. Parliament will shortly pass the Zero Carbon Bill, which will:

- make it nearly impossible for New Zealand to meet its emissions targets;
- prevent far greater emissions reductions by forgoing the benefits of international cooperation, an approach that if followed by other countries will lead to a warmer planet;
- sacrifice hundreds of billions of dollars and New Zealanders' wellbeing for no emissions benefit; and
- could create unnecessary political pressure to grant to Cabinet the same type of executive powers that brought the economy to its knees in 1984.

The political opposition to methane targets has distracted attention away from serious flaws in the Bill. As a result, the government has not had to defend why its Bill proposes to commit New Zealand to spending hundreds of billions of dollars more than is necessary when that does not help the environment, at least with respect to emissions.

The government has not had to explain its resistance to including in the Zero Carbon Bill words like “effective” and “efficient” that would drive activities towards ways to lower emissions that work.

Three simple changes to the Bill can remove its constitutional risk and make it *easier* for New Zealand to reach its emissions targets simply by doing what works.

APPENDIX

Anatomy of a takeover

This appendix reproduces key elements of the Climate Change Response (Zero Carbon) Amendment Bill at second reading.

The Minister for Climate Change must set emissions budgets:

5U 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.

The Minister must determine how emissions budgets will be met:

5W How emissions budgets 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.

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

...

- (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;

The role of the Climate Change Commission for reducing emissions:

5X 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 5W).

Section 5ZD authorises the Minister to plan how an emissions budget will be met. The scope of planning covers the economy:

5ZD 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 5ZA in accordance with the dates set out in section 5U(3).
- (2) The plan must be prepared and published—
 - (a) after the relevant emissions budget has been notified under section 5ZA; 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.

The Commission must advise the Minister only on “the direction of policy” required for an emissions reduction plan:

5ZE 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 5Z(2) as if it referred to preparing an emissions reduction plan.

Section 5ZF describes the process that the Minister must follow when preparing a plan. This section includes the rule that a plan may be changed at any time:

5ZF 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 5ZE 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.

The Commission's monitoring function will reveal the gap between actual and required emissions reductions. Monitoring is at the level of plans and budgets only. The Commission is not asked to evaluate policies and strategies within plans:

5ZG 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 5ZH and 5ZI (which relate to reporting requirements).
- (2) The Commission must carry out its monitoring function in accordance with the rules referred to in section 5X(1)(b) (which relates to measuring progress towards meeting emissions budgets and the 2050 target).

5ZH 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.

5ZI 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 5X(1)(e).

The Minister may request advice from the Commission:

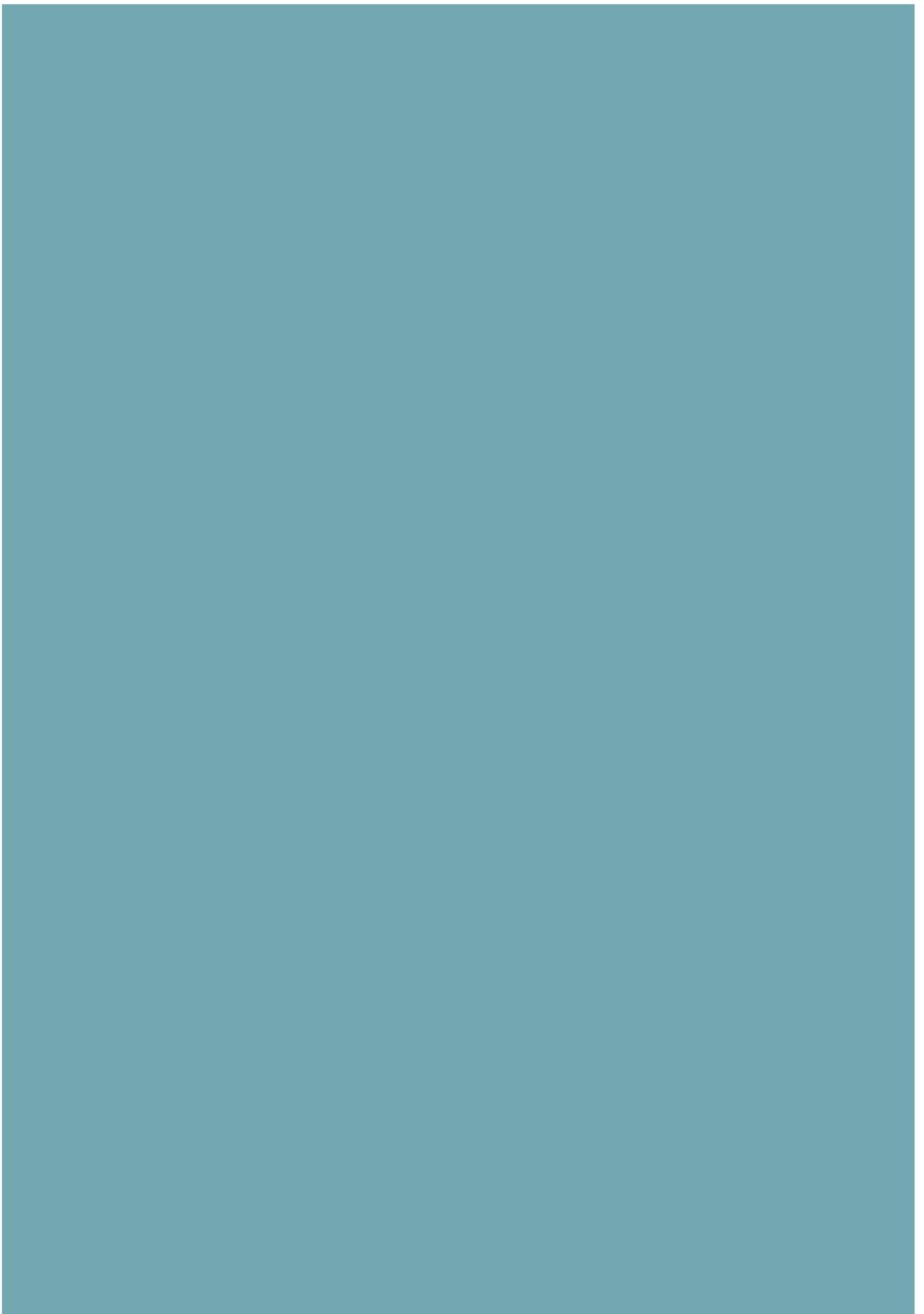
5K Reports to Government

- (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.

Endnotes

1. Owen McShane, “The Extent to Which Regulatory Control of Land Use is Justified Under the Resource Management Act,” Discussion paper (Wellington: Ministry for the Environment, 1998).
2. See for example a recent speech by Hon Megan Woods, “Towards Zero Carbon: Minister Woods speech to Gas NZ Industry Forum”, 31 October 2019, available from: www.beehive.govt.nz/speech/towards-zero-carbon-minister-woods-speech-gas-nz-industry-forum
3. Jacinda Ardern and James Shaw, “Landmark climate change bill goes to Parliament,” Press release (Wellington: New Zealand Government, 8 May 2019).
4. Jason Walls, “Jacinda Ardern is keen on declaring a climate-change emergency but roadblock remains,” *The New Zealand Herald* (3 July 2019).
5. Isobel Ewing, “Jacinda Ardern: ‘Climate change is my generation’s nuclear-free moment’,” Newshub (20 August 2017).
6. Shane Jones and James Shaw, “ETS fixes drive climate action,” Press release (Wellington: New Zealand Government, 31 July 2019).
7. The purpose statement of the Zero Carbon Bill that refers to the commitment to reduce emissions in the Paris Agreement: “Purpose... (aa) provide a framework by which New Zealand can develop and implement clear and stable climate change 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.”
8. The Bill includes other provisions, including new targets for biogenic methane emissions.
9. Ministry for the Environment, “Climate Change Response (Zero Carbon) Amendment Bill,” First reading, Explanatory note (Wellington: New Zealand Government, 2019), 1.
10. Leakage refers to a shift of economic activity to other countries based on regulatory arbitrage of emissions policies across countries.
11. Ministry for the Environment, “Climate Change Response (Zero Carbon) Amendment Bill: Summary” (Wellington: New Zealand Government, 2019), 12, <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/climate-change-response-zero-carbon-amendment-bill-summary.pdf>
12. We will refer to international units and opportunities for emissions reductions and removals offshore throughout this report. All references to international schemes and international units refer only to units and schemes with integrity. Section 6 of the Zero Carbon Bill excludes fraudulent units by defining offshore mitigation as only schemes that are “robustly accounted for to ensure that, among other things, double counting is avoided”. We follow the lead of the authors of the Zero Carbon Bill and exclude non-genuine units and schemes.
13. New Zealand Institute of Economic Research, “Economic Impact of 2050 Emissions Targets” (Wellington: Ministry for the Environment, 2018).
14. Though this particular emissions scheme is genuine as far as we know, any emissions scheme including this example would need to pass independent certification before it can contribute to emissions targets. This example is provided to illustrate the potential opportunity.
15. See Lambert Schneider, et al. “Double Counting and the Paris Agreement Rulebook,” *Science* 366:6462 (2019), 180–183.
16. International cooperation can help in other ways. In their analysis of the Zero Carbon Bill, MfE officials expressed concern about the consequences of planting trees on 2.8 million hectares of land, about 10% of New Zealand’s landmass, to offset emissions. But those trees could be planted almost anywhere in the world, in places that might welcome the investment more than we do.
17. Amy Goodman, “Venezuelan President Hugo Chavez on How to Tackle Climate Change: ‘We Must Go from Capitalism to Socialism’,” *Venezuelanalysis.com* (23 December 2009).
18. As we note in the next chapter, the Zero Carbon Bill does not yet say how plans come into effect.
19. In April 2013, the Labour and Green parties jointly proposed to replace the wholesale electricity market with a centralised buyer model. See Kate Chapman and Vernon Small, “Labour promises to cut power prices,” *Stuff* (18 April 2013).

20. The Bill requires the Commission to evaluate the Minister's *plan*, which are collections of policies and strategies, but not individual policies. The wording of section 5ZH(2) requires "an assessment of the adequacy of the emissions reduction plan".
21. Ministers are appointed by invitation of the Prime Minister, who chairs Cabinet.
22. Andrew Geddis, "Parliamentary Government in New Zealand: Lines of Continuity and Moments of Change," *International Journal of Constitutional Law* 14:1 (2016), 104.
23. *Ibid.*
24. Geoffrey Palmer, *Reform: A Memoir* (Wellington: 2013).
25. *Ibid.*
26. William Lawes, "The Economic Stabilisation Act 1948 – A giant's power?" Thesis submitted for LLB (Hons), Victoria University (1983), 3.
27. On 4 December 1982, the Court of Appeal declared wage freezes for public servants invalid because the regulation giving effect to the freeze conflicted with an Act of Parliament, the State Services Condition of Employment Act 1977. Eleven days later, the government responded by introducing legislation under urgency to validate its illegal action. See Geoffrey Palmer, *Reform: A Memoir*, *op. cit.*
28. Don McKinnon, "Economic Stabilisation Act Repeal Bill," Second reading, Hansard 482, Speech (Wellington: New Zealand Parliament, 30 June 1987), 10111.
29. J.S. McLay, "Road User Charges Amendment Bill (No. 3)," Hansard 459, Speech, NZ Parliamentary Debates (29 November 1984), 2258.
30. Michael Bassett, *Working with David* (Wellington: 2008), 122.
31. Geoffrey Palmer, "What is Distinctive About New Zealand Law and the New Zealand Way of Doing Law – Innovation in New Zealand Statute Law," Paper delivered to the Law Commission, Legislative Council Chamber (Wellington: 25 August 2006), 11.



New Zealand could be a leader in global emissions reduction. We could lower global emissions by far more than we contribute. We could achieve net zero emissions sooner than 2050. We can do all this with a commitment to do what works to lower emissions – partnering with or funding the best sources of emissions reduction and removals wherever they are in the world.

But New Zealand is about to let national borders get in the way of solutions to a global problem. The Climate Change Response (Zero Carbon) Amendment Bill will require emissions to be reduced domestically as far as possible. Research commissioned by the Ministry for the Environment suggests forgoing international co-operation could add hundreds of billions of dollars to the cost of reducing emissions to net zero by 2050, which all-but guarantees failure to achieve every emissions target.

Worse, the Zero Carbon Bill threatens to give to the Minister for Climate Change sweeping powers over the economy to plan how and where emissions will be reduced.

We propose three amendments to the Zero Carbon Bill that will prioritise effective action on emissions and neutralise the Bill's constitutional risks. These changes could increase New Zealand's contribution to global emissions reduction by a factor of 20.

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