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Environment Select Committee

Climate Change Response (Zero Carbon) Amendment Bill

Submission of Transparency International New Zealand (TINZ)

Our Expertise on this Topic

Transparency International New Zealand (TINZ) welcomes the opportunity to make a submission on the Climate Change Response (Zero Carbon) Amendment Bill. It fits closely with our objectives and we are pleased to offer a civil society perspective. Our chief contributors to this report are our Chairperson Suzanne Snively, and two of our Members with Delegated Authority and expertise in climate change law and policy, Sarah Mead and Ferdinand Balfourt. Our CEO has coordinated the response.

Transparency International NZ would like the opportunity to provide an oral submission.

1. TINZ strongly supports the following elements of the Climate Change Response (Zero Carbon) Amendment Bill (the Bill):

- 1.1. The **purpose**, in particular the reference to limiting global average temperature increase to 1.5°C above pre-industrial levels, and the Bill's monitoring and transparency provisions which are aimed at ensuring that this purpose is achieved. TINZ is concerned by recent reports by international organizations which indicate that, unless drastic reductions in greenhouse gas (GHG) emissions are achieved in the next decade, it will not be possible to keep warming below 1.5°C.¹ It is imperative to transparently monitor the causes and effects of global warming in order to design national policies towards avoiding the potentially catastrophic consequences associated with climate change. In addition to monitoring the effects of climate change in New Zealand, TINZ supports efforts to assist greater monitoring in vulnerable countries, such as those in the Pacific, which are already experiencing loss and damage resulting from 1°C of global warming.²

¹ See for example: IPCC, 'Special Report: Global Warming of 1.5°C. Summary for Policymakers' (2018) http://www.ipcc.ch/pdf/special-reports/sr15/sr15_spm_final.pdf; UN Environment Programme, 'Emissions Gap Report 2018' (2018); IMF Policy Paper, 'Fiscal Policies for Paris Climate Strategies—From Principle to Practice', May 2019. Available from <http://www.imf.org/external/pp/ppindex.aspx>.

² See: IPCC, 'Special Report: Global Warming of 1.5°C. Summary for Policymakers' (2018) http://www.ipcc.ch/pdf/special-reports/sr15/sr15_spm_final.pdf. See also: IMF Policy Paper, 'Fiscal Policies for Paris Climate Strategies—From Principle to Practice', May 2019. Available from <http://www.imf.org/external/pp/ppindex.aspx>. This Policy Paper notes (p. 13): 'Many small island states are no higher than a few meters above sea level and face an existential threat from projected sea level rises of 0.3-2.5 meters by 2100. As climate change builds up over time, not only low-income countries but also advanced economies may experience substantially worse macroeconomic effects' [footnotes removed].

- 1.2. The inclusion of a **legislative target** for the reduction of greenhouse gas (GHG) emissions by 2050 and **interim budgets** which are based on science and consistent with transparent monitoring to ensure that the overarching purpose to limit global warming to 1.5°C above pre-industrial levels is achieved.
- 1.3. The establishment of an **independent Climate Change Commission** and its purpose, in particular its advisory and monitoring functions. It is important that the Commission is adequately resourced to be effective.
- 1.4. The provisions requiring **information** to be made **publicly available**, including Commission reports requested by the Government (5K), Commission advice on target reviews (5X), Commission advice on the setting and revision of emissions budgets (5X and 5ZB), Commission advice on emissions reductions plans (5ZE), Commission annual monitoring reports (5ZH) and end of budget period reports (5ZI), national climate change risk assessments (5ZN), National Adaptation Plans (5ZR), and progress reports on National Adaptation Plans (5ZS).

2. TINZ has concerns regarding the following elements of the Bill.

- 2.1. The **lack of enforcement measures** to ensure that the 2050 target and interim budgets are adhered to.

The Bill expressly notes that the 2050 target and interim budgets 'are not enforceable in a court of law' and excludes the availability of any remedy or relief if the Government fails to meet the target and/or budgets. The Bill only requires that, where a declaration is made by the court, the Minister must bring this to the attention of the House of Representatives and advise on the Government's response. This is contrary to the Bill's express purpose to 'provide clear and stable climate change policies'. It is essential that the legislative framework provides *as much stability as possible* to accelerate the transition. A 'soft' framework discourages businesses operating in New Zealand from making the difficult choices and investing in effective low-carbon technology and risks 'politicising' the issue. Moreover, the Bill appears to remove the possibility of a Court (i.e. in judicial review proceedings) finding that the 2050 target and/or interim emissions budgets are mandatory relevant considerations (see section 5ZK). This is inconsistent with the purpose of the Act which aims to ensure stable policy-making. It also limits the potential utility of the monitoring and transparency provisions in the Bill to inform public decision-making towards ensuring that global warming is limited to 1.5°C.

- 2.1.1. **TINZ recommends that the Select Committee remove proposed sections 5ZJ and 5ZK.** The carbon target and interim budgets should be enforceable in a court of law. The monitoring and transparency provisions will ensure that court costs for reviewing enforcement are manageable, and that courts have the evidence base to assess enforcement. Moreover, it should be open for the courts to determine that the 2050 target and/or interim emissions budgets are mandatory relevant considerations in certain circumstances.

*In the alternative, if section 5ZJ is retained (which TINZ does not support), then the accountability measures in the Bill **must be strengthened**. For instance, a declaration issued by a Court might trigger a procedure whereby the Commission is required to prepare a report setting out the effects of having failed to meet the target or interim budgets, the additional measures required to address the shortfall, and the costs associated with having to 'catch-up'. Such information would facilitate accountability by*

ensuring that the public is sufficiently informed. The Bill should also provide for a fast-track process for seeking a declaration in court, or provide that a declaration of a court under 5ZJ is effective insofar as it engages the (preferably more robust) process in 5ZJ(3) until such declaration is overturned by a higher court.

2.2. Furthermore, regarding the 'Minister's response to Commission' on the setting of emissions budgets (5Y), the Bill allows the Minister to reject the Commission's advice provided the Minister decides whether further consultation is required and explains the reasons for the departure from the Commission's advice. This undermines the purpose of establishing an independent Commission and affords excess discretion to the relevant Minister.

2.2.1. **TINZ recommends that the Select Committee consider options to further strengthen 5Y to ensure, to the maximum extent possible, that the Minister is required to follow the advice of the Commission. This could be achieved by stipulating a narrow set of circumstances in which the Minister can depart from the Commission's advice.**

For further information on this submission contact:

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