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Greetings

Zero Carbon Bill Submission

This is a submission on *Our Climate Your Say: Consultation on the Zero Carbon Bill*. I make this submission on my own behalf but for background I can say that I am a Professor of Law at the University of Waikato and Director of the Centre for Environmental, Resources and Energy Law. I specialize in energy and natural resources law. I am the New Zealand member of the International Bar Association's Section on Energy, Environment, Resources and Infrastructure Law Academic Advisory Group. I have carried out research on a number of different aspects of climate change law and policy. The most recent, on climate change legislation of precisely the kind under consideration in this process, was published in a book by Oxford University Press. So I am in a position to provide informed advice on the matter in hand.

I make these submissions in an abbreviated manner, but in a form that answers the specific questions on which you have sought feedback.

A New 2050 Target

1 Process

I agree with option 2, as proposed by the Parliamentary Commissioner for the Environment.

I also submit:

- The target setting and amendment procedures should connect clearly to the NZ ETS. The relationship between targets and the ETS is presently very obscure, and the ETS has no apparent cap that might be connected to targets.
- The target setting and amendment procedures should replace or be harmonized with the existing two procedures in the Climate Change Response Act.
- Earlier targets and commitments set by various means should be rescinded where they are incompatible with new targets.

2 Which of the three target options?

I support option 3, net zero emissions across all greenhouse gases by 2050.

I also submit:

- Option two, net zero carbon dioxide, is deeply flawed. It exacerbates tension between different sectors.
- I strongly agree with supporting lower income households to avoid inequity. I argue for the design of policies to avoid regressive effects, that is undue burdens on poor people.

3 How should NZ meet its targets?

I submit that the right option is Option 2, use emissions reductions from overseas.

I believe that the situation for international carbon markets will be entirely different from under Kyoto, and that New Zealand should be open to using credits that are genuine, additional, and beneficial for the vendor country and community. New Zealand's situation is so tight that we may be obliged to explore all such options. At the same time we must recognize that the prices of units may be much higher than they were under the flawed Kyoto regime.

4 Revision of Targets

Yes, there should be a mechanism other than statute. But procedurally it should involve the CCC in reporting publicly on all the implications of a proposal for change, and it should be fenced in with substantive criteria that must be met for a statutory power to be exercised.

Emissions Budgets

5 Emission Budget Cycle

Yes I agree with the proposal. It draws on relevant UK experience.

6 Altering the last emissions budget

I support option 2, change of the third budget but only when the subsequent budget is set.

7 Review and adjustment of second budget

I support this from a pragmatism point of view, so long as the circumstances are truly exceptional.

8 Considerations to be taken into account

I submit that the only considerations that should be taken into account by the government or the Commission in setting emissions budgets are:

- (i) that they produce a track that is reasonably like to lead to the achievement of all targets and
- (ii) the importance of early action.

While the matters listed on pp 44-45 are important in a general sense, they should not be allowed to undermine the process of setting a budget that shows unequivocally what must be done in order to stay on a credible pathway.

Other design choice matters:

- Aligning emissions budgets with the NZ ETS: I consider that this is essential. The relationship between targets overall, budgets, the NZ ETS, and other measures requires careful analysis and alignment.
- Aligning emissions budgets with international commitments: I consider that this is essential, in order that the reconciliation of the two be transparent and continuous.

9 Government response plans

I agree with the proposal for government response plans.

I also submit:

- It is absolutely correct that budgets alone will not achieve targets, and that we must implement policies to reduce emissions. I point out that this has often been the difficult part of climate change policy-making.
- It is therefore essential that the government identify suites of policies to achieve targets, broken out by budget periods.

10 Issues in setting plans

I submit:

- The policies in a plan must be quantified to determine the emissions reductions that they are likely to produce. All possible relevant policy actions be costed in emissions terms. When that information is combined with information about costs and other benefits, proper judgment can be brought to bear on finding least-cost emissions reductions pathways, and on finding the ways to make other options more feasible and lower in cost in the future. I consider that more work needs to be done on this part of the planning for a Zero Emissions Bill.
- Legal obligations must be placed on sectoral regulators and agencies to identify, set and implement the policies necessary to deliver on the plan and the budget. (Examples of such sectoral regulators and agencies are the Electricity Authority, the Energy Efficiency and Conservation Authority, the Ministry of Transport, and the New Zealand Transport Agency.) I recognize that this is a major shift, but it is essential that climate change policy be implemented across government and through society and economy. I consider that more work needs to be done on this part of the planning for a Zero Emissions Bill.

Climate Change Commission

11 Proposed CCC functions

I agree with the proposals for a Commission that has an advisory rather than executive role in relation to climate change generally and the ETS in particular. Ministerial responsibility for decisions is essential.

I also submit:

- The Commission has a role in operating mechanisms that hold the government to account, with monitoring, publicly-available advice (to which the government must respond publicly).
- This role should include monitoring budgets.

- It is also important that the Commission report and advise on the Government Response Plan, including the longer-term strategy, the policies that the government identifies to achieve the emissions budget, the other actions we need to take, and the challenge of vulnerable communities and sectors. It is important that the Commission 'run a ruler' over government policy proposals to ascertain whether their contributions to reductions are sufficient.
- The independence of the Commission in performing this function must be carefully protected. The protection must include assurance that the Commission is properly funded.

12 Role of the CCC as to the NZ ETS

The CCC role should be one of advice, not decision-making.

13 Expertise

I agree with the proposals.

Adaptation

14 Zero Carbon Bill and adaptation

I agree that the Bill should include adaptation.

15 New functions

I agree with the proposed National Climate Change Risk Assessment, the National Adaptation Plan, regular review of progress towards the Plan, and an adaptation reporting power.

I also submit:

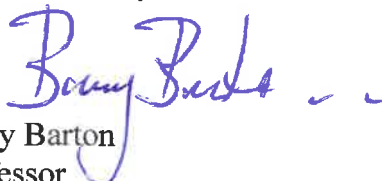
- The Plan must have legal effect on the work of central government, local authorities, and their agencies. It must have particular effect on decisions under the Local Government Act and the Resource Management Act. Otherwise the Plan will be regarded as a non-binding information source, and its implementation will be slow and patchy.
- Local bodies need to be helped to to address adaptation, such as when managed retreat from coastlines or river flood plains attracts vehement opposition from property owners.

16 Targeted adaptation reporting power

I support an adaptation reporting power and process because decision-making is so decentralized.

I remain willing to clarify any matter raised in these submissions, and thank you for the opportunity to comment.

Yours faithfully



Barry Barton
Professor