

# NEW ZEALAND



## Law and Practice

### Contributed by:

Josh Williams, Dan Williams, Maree Baker-Galloway and Anton Trix  
**Anderson Lloyd**

## Contents

- 1. Multilateral and Regional Regimes p.4**
  - 1.1 Multilateral Climate Change Legal Regime p.4
  - 1.2 Regional Climate Change Legal Regimes p.5
- 2. National Policy and Legal Regime (Overview) p.6**
  - 2.1 National Climate Change Policy p.6
  - 2.2 National Climate Change Legal Regime p.7
  - 2.3 Bilateral/Multilateral Co-operation p.9
  - 2.4 Key Policy/Regulatory Authorities p.10
- 3. National Policy and Legal Regime (Mitigation) p.12**
  - 3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors p.12
- 4. National Policy and Legal Regime (Adaptation) p.14**
  - 4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors p.14
- 5. Responses to International Developments p.14**
  - 5.1 Carbon Markets p.14
  - 5.2 European Union Carbon Border Adjustment Mechanism (CBAM) p.16
- 6. Liability for Climate Change and ESG Reporting p.16**
  - 6.1 Task Force on Climate-Related Financial Disclosures (TCFD) p.16
  - 6.2 Directors' Climate Change Liability p.17
  - 6.3 Shareholder or Parent Company Liability p.17
  - 6.4 ESG Reporting and Climate Change p.17
- 7. Transactions p.18**
  - 7.1 Due Diligence p.18
- 8. Climate-Friendly Investment Support p.19**
  - 8.1 Renewable Energy p.19
  - 8.2 Other Support p.19

Contributed by: Josh Williams, Dan Williams, Maree Baker-Galloway and Anton Trixi, **Anderson Lloyd**

**Anderson Lloyd** is one of New Zealand's oldest and most respected law firms. It is a unique national firm with four integrated offices (Auckland, Christchurch, Dunedin, and Queenstown) across New Zealand. Across its multidisciplinary team, the firm has experts in climate change areas such as renewable energy projects, the Climate Change Response Act, the emissions trading scheme, carbon forestry projects, carbon trading arrangements, and the climate change aspects of the Resource Management Act. Anderson Lloyd is committed to

sustainable practices and it takes responsibility as custodians of a multi-generational firm, caring for its people, community, and environment. The firm takes ownership of, and is accountable for, its measurable emissions while conducting day-to-day business. Anderson Lloyd was the first large New Zealand law firm to attain Toitū net carbonzero accreditation and is an active member of the Sustainable Business Council, Climate Leaders Coalition, and the NZ Green Building Council.

## Authors



**Josh Williams** is a partner in Anderson Lloyd's corporate and commercial team. He advises clients on a broad range of matters – from commercial contracts, technology contracts,

and corporate governance matters through to significant M&A transactions, capital raisings, shareholder arrangements, joint ventures, and corporate structuring. Josh has a specialist focus on climate change and the emissions trading scheme, and advises clients on a variety of arrangements involving the New Zealand carbon market. This includes carbon forestry projects, carbon trading arrangements and NZU off-take agreements, carbon management, and other commercial contracts, as well as the scheme itself.



**Dan Williams** is a partner in Anderson Lloyd's property team and advises on all aspects of commercial property law. Dan specialises in forestry law, including acquisitions/disposals,

estate management, and ETS/carbon trading. He is widely regarded as a leading lawyer in ETS/carbon trading, and is frequently requested to provide specialist advice to other law firms and present at industry conferences/events. Dan is also an accredited specialist member of the property law section of the New Zealand Law Society.

Contributed by: Josh Williams, Dan Williams, Maree Baker-Galloway and Anton Trixl, **Anderson Lloyd**



**Maree Baker-Galloway** is a resource management partner at Anderson Lloyd, based in Queenstown with a national practice and profile in resource management, climate change,

and environmental issues. Maree has particular expertise in biodiversity, freshwater and marine issues, tourism and urban development, and natural resource use. She advises industry leaders on complex projects, national strategies, and day-to-day operational issues, as well as managing complex projects and litigation. Maree also advises public interest groups and industry bodies. She was the national executive for the Resource Management Law Association from 2007 to 2017 including two years as President.



**Anton Trixl** is a partner at Anderson Lloyd and a specialist in the energy, natural resources, and infrastructure sectors. Since 2004 he has been advising clients on transactions in these

sectors in more than 30 countries, including project development and project financing, PPPs, M&A, joint ventures, construction, and a wide variety of commercial contracts. After more than ten years with law firms in Wellington, Dubai, and Singapore (including seven years with Clifford Chance in Dubai and Singapore), Anton joined Anderson Lloyd in March 2015. He is also a member of the Society of Construction Law New Zealand.

---

## Anderson Lloyd

Level 3  
Anderson Lloyd House  
70 Gloucester Street  
Christchurch 8013  
New Zealand

Tel: +64 3 379 0037  
Email: [lawyers@al.nz](mailto:lawyers@al.nz)  
Web: [www.al.nz](http://www.al.nz)

The logo for Anderson Lloyd, featuring the word "anderson" in a bold, blue, lowercase sans-serif font, and the word "lloyd." in a larger, bold, blue, lowercase sans-serif font below it.

## 1. Multilateral and Regional Regimes

### 1.1 Multilateral Climate Change Legal Regime

#### Multilateral and Regional Regimes

New Zealand has been a party to the United Nations Framework Convention on Climate Change (UNFCCC) since its inception and has entered into all significant agreements made under it including the Kyoto Protocol, the Doha Amendment, and the Paris Agreement. New Zealand participates in the annual Conference of the Parties (COP) meetings, where UNFCCC member countries discuss and negotiate climate-related issues, as well as review and assess the implementation of the convention. New Zealand has made various commitments under the UNFCCC. In particular, it has pledged to reduce its greenhouse gas emissions, contribute to climate finance for developing nations, and take steps to adapt to the impacts of climate change. It has adopted the Paris Agreement, joining the global effort to limit global warming to well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the temperature increase to 1.5 degrees Celsius.

#### Negotiation Blocs

New Zealand is not a party to any climate related collective-interest negotiation blocs at the UN. While it is considered part of the “Western Europe and other States” group (as per the UN’s standard regional grouping procedure), this grouping is not generally used to negotiate the collective interests of its members.

#### Stance on Primacy Climate Change Issues

##### Mitigation

Domestically, New Zealand has taken a number of steps towards climate change mitigation. It has:

- legislated emissions reduction targets;
- implemented an “emissions budget” system, setting out the pathway to its emissions targets in five-year periods;
- implemented an “emissions reduction plan” (ERP) system, under which it communicates to the public its proposed policy initiatives for each emissions budget period prior to the beginning of that period;
- implemented a domestic “emissions trading scheme” (ETS), which aims to incentivise emissions reduction and sequestration;
- signalled an intention to establish a “split gas” emissions pricing system for “on-farm” agricultural emissions by 2030 and an independent board to implement the pricing system; and
- created He Pou a Rangi – the Climate Change Commission (Climate Change Commission) to provide independent advice to the government on emissions budgets, climate mitigation, and adaptation strategies to assist it achieving its climate change targets and to hold the government accountable through the public release of the Climate Change Commission’s advice.

##### Adaptation and capacity building

In 2022, the New Zealand government released its first National Adaptation Plan (NAP) for the period 2022–2028, which considers the impacts of climate change now and into the future and sets out how we will adapt to those impacts under proposed strategies, policies, and actions.

This includes addressing risks (identified in the first National Climate Change Risk Assessment (NCCRA), released in 2020) to:

- the natural environment, by addressing risks to ecosystems and biodiversity due to climate change;

- homes, buildings, and places, by mitigating climate change risks to existing homes and places where possible, and ensuring that climate hazards are considered when making urban development decisions;
- infrastructure, by reducing the vulnerability of assets exposed to climate change, and ensuring that all new infrastructure is fit for a changing climate;
- communities, by supporting communities facing climate-related disruption and disasters, and educating communities on climate change issues to enable those communities to adapt and participate in local decisions; and
- the economy and financial systems, by giving businesses the tools and information they need to respond to climate risks, and to lower the barriers to adaptation and innovation addressing those risks.

The government has also signalled an intention to develop a climate adaptation model, which will include frameworks for investment and cost-sharing, roles and responsibilities and climate risk and response information sharing. An inquiry into climate adaptation was established in 2024 for that purpose.

### *Domestic climate finance*

New Zealand currently has the following climate finance initiatives in effect:

- the Sovereign Green Bonds programme, under which the government issues green bonds to finance projects that contribute to climate and environmental objectives; and
- New Zealand Green Investment Finance, a Crown-owned green investment bank established to fund investment that reduces greenhouse gas emissions.

Until the change of government in 2023, other domestic climate finance initiatives including the “Clean Car Discount” scheme and the “Government Investment in Decarbonisation Fund” were in place. These initiatives have now been discontinued, and it is yet to be seen whether new targeted domestic climate finance will instead be offered.

### *International climate finance and technology transfer*

The government has committed to providing NZD1.3 billion in international climate aid over the period 2022–2025, of which at least 50% of this will be going towards nations in the Pacific region (including the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu).

The goals of this funding include:

- accelerating climate change mitigation within the recipient nations, helping them to meet their nationally determined contributions;
- enhancing resilience and adaptation to the impacts of climate change; and
- improving institutional capability within those nations and enhancing their ability to make evidence-based decisions.

## **1.2 Regional Climate Change Legal Regimes**

### **Regional Climate Change Legal Regime *Pacific Islands Forum***

New Zealand is one of 18 members of the Pacific Islands Forum (PIF), which in 2019 declared climate change as “the single greatest threat facing the Pacific”. In 2022, the Forum formally declared a “Climate Emergency” and emphasised the urgency of limiting the global average

temperature rise to 1.5 degrees Celsius through rapid, deep, and sustained greenhouse gas emissions reduction.

At the PIF's most recent meeting in November 2023, it:

- committed to implementing the Paris Agreement and acting on the IPCC's 6th Assessment Report;
- committed to the transition away from coal, oil and gas in its energy systems (in line with IPCC pathways for limiting global average temperatures to 1.5°C above pre-industrial levels) and for fossil fuel consumption to peak in the near term; and
- called on all development partners to provide substantially greater levels of climate finance, technology and capacity to accelerate decarbonisation of the nations of the Pacific Ocean.

Prior to the PIF's 2023 meeting, the member states of Tonga, Fiji, Niue, Solomon Islands, Tuvalu and Vanuatu signed the "Port Vila call for a just transition to a fossil fuel free Pacific" under which the Pacific nations pledged to phase out fossil fuels "as soon as possible". The Port Vila call was then discussed and formalised by the PIF in its November 2023 meeting. At the meeting, New Zealand and Australia negotiated an alteration of the final text to ensure that it did not explicitly mention fossil fuel extraction and production. This was in light of New Zealand's recent decision to recommence fossil fuel exploration and extraction. This decision was criticised by several of the nations at the forum.

## 2. National Policy and Legal Regime (Overview)

### 2.1 National Climate Change Policy Nationally Determined Contribution (NDC)

New Zealand's NDC is to reduce greenhouse gas emissions by 50% below 2005 levels (expressed on a "point-year target" approach), equating to a provisional emissions budget of 571 Mt CO<sub>2</sub>-e over the period of 2021 to 2030.

This NDC, submitted on 31 October 2021, is a 20% increase on New Zealand's original NDC of reducing greenhouse gas emissions by 30% below 2005 levels.

New Zealand's second NDC (NDC2) must be set by 2025 and will cover the period 2031 to 2035. The Climate Change Commission is due to provide advice on NDC2 to the Minister for Climate Change in December 2024.

### Scope of NDC

New Zealand's NDC:

- is economy-wide, covering all sectors including energy, industrial processes, product use, agriculture, land use and forestry, and waste; and
- covers all greenhouse gases, including CO<sub>2</sub>, CH<sub>4</sub>, SF<sub>6</sub>, HFCs, PFCs, N<sub>2</sub>O and NF<sub>3</sub>.

### Scientific Methodologies for Calculating Commitments

The methodologies used by New Zealand in calculating its commitments are as follows:

- for estimating anthropogenic greenhouse gas emissions and removals, the NDC applies 100-year Global Warming Potentials from the IPCC 5th assessment report, methodologies from the IPCC 2006 greenhouse gas inven-

tory guidelines, and the 2013 IPCC KP Supplement; and

- for assumed accounting for the forestry and other land-use sectors, the NDC applies a combination of the 2006 IPCC Guidance and the 2013 IPCC Kyoto Protocol Supplement, providing for Kyoto Protocol accounting approaches to be applied to the greenhouse gas inventory land-based categories.

In the future, New Zealand intends to consider methodologies introduced by the 2013 IPCC Wetlands Supplement and the 2019 Refinement to the 2006 IPCC Guidelines.

## Climate Change Policy

New Zealand legislated its role in addressing climate change through the Climate Change Response Act 2002 (CCRA) and established a national ETS in 2008.

Domestic climate targets are legislated under the Climate Change Response (Zero-Carbon) Amendment Act 2019. The Climate Change Commission has also been established to provide advice to the government on emissions budgets, climate mitigation and adaptation strategies to achieve its climate change targets.

In 2022, the government set New Zealand's first three emissions budgets for the periods of 2022–2025, 2026–2030, and 2031–2035. It also published the first ERP for New Zealand, setting out how the government intends to meet its first emissions budget.

New Zealand's emissions budgets are currently as follows.

- 2022–2025: 290 MtCo2e.
- 2026–2030: 305 MtCo2e.
- 2031–2035: 240 MtCo2e.

In April 2024, the Climate Change Commission released for consultation its draft advice on New Zealand's fourth emissions budget for the period of 2036–2040, as well as revisiting its view on the adequacy of the current budgets for the first, second and third emissions budgets. It has suggested that the budgets be updated as follows.

- 2022–2025: 281 MtCo2e.
- 2026–2030: 286 MtCo2e.
- 2031–2035: 221 MtCo2e.
- 2036–2040: 134 MtCo2e.

The Climate Change Commission has stated the recommended decreases in the first, second and third emissions budgets are due to changes to both New Zealand's circumstances as well as methodological changes to the way that greenhouse gas emissions and removals are calculated and reported since the setting of those budgets. It states that the reduced budgets accurately reflect the intent of the budgets at the time they were set, rather than representing an increase in ambition.

## 2.2 National Climate Change Legal Regime

### Climate Change Response Act

The CCRA was enacted in response to the 1992 Kyoto Protocol. Its purpose is to:

- enable New Zealand to meet its international obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement;
- provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce the emission of greenhouse gases; and

- provide for the imposition, operation, and administration of a levy on specified synthetic greenhouse gases contained in motor vehicles and another levy on other goods to support and encourage global efforts to reduce the emission of those gases.

In 2019, the CCRA was significantly amended to reflect New Zealand's obligations under the Paris Agreement by legislating the following climate targets:

- net zero greenhouse gas emissions (other than biogenic methane) annually by 2050;
- 10% less biogenic methane emissions than 2017 levels by 1 January 2030; and
- 24–47% less biogenic methane emissions than 2017 levels by 1 January 2050.

The Climate Change Commission is reviewing the 2050 climate change targets (including the biogenic methane target) and is due to deliver its report to the government by 31 December 2024. The government is also to appoint an independent expert panel to review the latest agricultural biogenic methane science to provide an up-to-date evidence base about methane's warming impact. The panel will also provide advice to the government on a biogenic methane target that is consistent with the principle of no additional warming. That advice is expected by the end of 2024. In addition to establishing targets, the CCRA also:

- established the Climate Change Commission to provide advice to the government on emissions budgets, climate mitigation, and adaptation strategies to achieve its climate change targets;
- requires the government to prepare ERPs, NCCRAs, and NAPs; and
- regulates the ETS.

## Resource Management Act

The Resource Management Act 1991 (RMA) governs how people interact with natural resources. All people exercising powers and functions under the RMA are required to recognise and provide for the management of significant risks from natural hazards (includes droughts, fires, flooding and landslips) and have particular regard to the effects of climate change.

The RMA was amended by the Resource Management Amendment Act 2020 (RMAA) to bring climate change issues explicitly into the RMA for the first time. In doing so, the RMAA removed the previous restriction on decision makers' ability to consider the adverse effects of greenhouse gas emissions when making decisions on local plans and consents. That amendment took effect on 30 November 2022.

The RMAA also introduced the requirement for decision makers to "have regard to" the ERP and the NAP when making and changing regional policy statements, regional plans, and district plans. This amendment also took effect on 30 November 2022. The Natural and Built Environment Act 2023 (NBEA), which was intended to replace the RMA, was enacted in August 2023 but repealed in December 2023 following a change in government. The NBEA specifically identified the reduction of greenhouse gas emissions, the removal of greenhouse gases from the atmosphere, and the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change as part of the suite of "system outcomes" that all decisions under the NBEA would have been required to provide for. The NBEA also required that there be, at all times, a suite of regulations (secondary legislation) that apply nationally, to be called the "national planning framework". The national planning framework would have

been required to provide direction for each of the system outcomes, including those relating to climate change.

Following the repeal of the NBEA, the RMA remains the legislation governing the environmental effects of particular activities. There is an intention to replace the RMA with laws based on the enjoyment of private property rights, however, it is not clear at this stage how any new legislation will address climate change-related matters. Before replacing the RMA the government proposes to make amendments to it, including measures that will help increase renewable energy.

The Fast Track Approvals Bill, which provides an alternative consenting pathway to the RMA, is also currently before parliament. As currently proposed, Ministers will determine whether to refer a project to the fast track and, in doing so, may consider how a project will contribute to climate mitigation, adaptation and resilience to natural hazards (although it is not mandatory to do so). It is expected that this Bill will be passed in late 2024.

### Constitutional Position

The CCRA and the RMA are not part of New Zealand's "unwritten" constitution and are not "entrenched". They are able to be repealed with a 50% majority in parliament.

New Zealand's constitutional framework, with its separation of powers between the judiciary and parliament, means climate change is in the domain of a political and policy response. While other countries have seen courts adjudge constitutional and human rights issues with regard to climate change, including holding governments responsible for inaction on climate mitigation, New Zealand's legal system has not previously

provided for this. However, a recent Supreme Court decision may result in a shift in that situation. In *Smith v Fonterra Co-operative Group Ltd*, the Supreme Court declined to strike out claims in nuisance, negligence and a proposed novel tort of "climate system damage" against seven corporate defendants who were each involved in either an industry that emits greenhouse gases or one that manufactures and supplies products that emit greenhouse gases when used. Whether the claim is ultimately successful remains to be seen, but this case represents the potential evolution of the common law on climate change in New Zealand.

### 2.3 Bilateral/Multilateral Co-operation

New Zealand has focused on increased investment in climate aid, particularly in the Pacific, with the aim of taking up a greater and more invested role in the region in combatting climate change. New Zealand's primary goal in the region is building Pacific resilience to the impacts of climate change, through climate finance and by generally drawing attention to the issues faced by the country's Pacific neighbours. New Zealand's overall goal in the Asia-Pacific region is to support and collaborate with developing countries in meeting their Sustainable Development Goals.

In October 2021, New Zealand committed to spend NZD1.3 billion in grant-based climate finance between 2022 and 2025 with much of that finance commitment put forward to support Pacific Island countries with climate change adaptation. This built upon earlier climate finance announced in 2018 through a dedicated Climate Change Programme (operating until June 2023) which delivered NZD150 million towards preventative climate change action.

In February 2024, the New Zealand government announced an additional NZD15 million to support the Pacific Regional Environment Programme’s “crucial role it plays in providing advice and support in the Pacific”. A further NZD16.5 million was committed to the Cook Islands to aid their climate change efforts. In late April 2024, New Zealand continued its support for renewable energy in Southeast Asia by announcing a contribution of NZD41 million (USD25 million) to the Asian Development Bank’s Energy Transition Mechanism, which primarily aims to assist Indonesia, the Philippines, and Vietnam in making a fair and equitable transition to renewable energy. New Zealand continues to establish partnerships to explore, develop, and co-operate in supporting emissions reductions globally. While New Zealand has not entered into any formal agreements pursuant to Article 6.2 of the Paris Agreement, it has entered into agreements that contemplate climate change matters with Paris Agreement partners, including the following.

- The EU–NZ Free Trade Agreement, concluded in June 2022 – this agreement contained key provisions relating to labour standards, gender equality, climate change, emissions trading, environmental goods and services, forests, fisheries subsidies, and fossil fuel subsidy reform. Such an agreement is significant as it represents the first time that the EU has made commitments in a trade agreement to refrain from granting or maintaining harmful fisheries subsidies. It also contains the EU’s first trade agreement article on fossil fuel subsidy reform.
- The UK–NZ Free Trade Agreement – this deal confirmed the importance of other multilateral avenues for advancing climate goals. The agreement explicitly recognises the commitments of the Paris Agreement to achieve net-zero emissions and the commitments of

the 26th UN Climate Change Conference of Parties (COP26) to phase out “inefficient subsidies” for all fossil fuels. New Zealand also included in the agreement the importance of creating a platform to co-operate on issues of relevance to Māori, reinforcing the broader COP26 theme of protecting indigenous rights.

## 2.4 Key Policy/Regulatory Authorities Key Regulatory Bodies

### *Ministry for the Environment*

The Ministry for the Environment is responsible for several key aspects of the country’s environmental management, including:

- conducting research, analysis, and consultation processes to inform policy developments, including advising on and implementing the ERP and the NAP;
- leading and co-ordinating climate change policy efforts in New Zealand, including those to address climate change mitigation, adaptation, and resilience; and
- collecting and analysing data on greenhouse gas emissions and climate change impacts in New Zealand, including producing national greenhouse gas inventories and reports on progress towards meeting emissions reduction targets.

### *Environmental Protection Authority*

The Environmental Protection Authority (EPA) is responsible for:

- administering and regulating the ETS, including setting emission unit caps, managing the registry, monitoring compliance, and providing guidance to participants in the ETS; and
- assessing and providing approval for certain applications regarding activities that have potential environmental impacts, including those related to climate change.

## *Climate Change Commission*

The Climate Change Commission is not a regulatory body but an independent Crown entity that advises the government on climate change policy within the framework of the CCRA. Its purpose is to:

- provide independent, expert advice to the government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change, including preparation of the NCCRA; and
- to monitor and review the government's progress towards its emissions reduction and adaptation goals.

## *Ministry of Business, Innovation, and Employment & Energy Efficiency and Conservation Authority*

The Ministry of Business, Innovation, and Employment is responsible for implementing policies that decrease emissions in the energy and industry sectors, including overseeing the Energy Efficiency and Conservation Authority (EECA), the agency responsible for New Zealand's transition towards a sustainable energy system underpinned by clean energy use. In particular, EECA is responsible for:

- providing support for businesses and the public sector to accelerate decarbonisation (where available);
- ensuring that products and vehicles sold in New Zealand meet energy and fuel efficiency standards; and
- educating New Zealanders on climate change issues and on leading low-carbon lives through its "Gen Less" brand.

## *Ministry for Primary Industries*

The Ministry for Primary Industries is responsible for the implementation and regulation of policies in the primary sector, including:

- providing guidance related to the eligibility, accounting, and reporting of emissions off-sets through forestry and other sequestration activities; and
- the development of an emissions pricing system for the agricultural sector.

## *Local government*

Regional and district councils are the regulatory authorities at the "local" government level that implement the RMA through the development of regional policy statements, regional plans, and district plans, and decisions on resource consent applications. Councils' decisions on both plans and consents can be appealed to the Environment Court. Proposals deemed to be of national significance may be "called in" to be determined directly by either the Environment Court or a Board of Inquiry appointed by the Environmental Protection Agency.

There are also other bespoke plan-making and consenting processes that might see a change to a plan, or a consent, considered by the Environment Court at first instance, rather than a council.

Regional and district councils' knowledge and capacity to manage climate change mitigation and climate change impacts varies widely, particularly as the mandatory requirements to have regard to the ERP and the NAP have only been in force since 30 November 2022, and many councils are still building knowledge and resources.

## 3. National Policy and Legal Regime (Mitigation)

### 3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors National Climate Policy Mechanisms Relating to Climate Change Mitigation

Under the CCRA, the government must have released a current version of both the ERP and NAP.

The ERP is intended to set out a clear policy direction in the short to medium term as to how New Zealand's will meet its emissions budgets and targets. The government must release each ERP prior to the emissions budget to which it relates taking effect. While the ERP is intended to set out a clear policy direction for the country and provide certainty to individuals and businesses, the ERP is not set in stone and the government of the day can choose to abandon or modify aspects of the plan as it sees fit. This can be seen following New Zealand's recent change in government and the subsequent abandoning of many of the policy initiatives set out in the current ERP. The new government is required to release its ERP for the second emissions budget period by the end of 2024, and it is yet to be seen or indicated how it intends to meet the second emissions budget for the period of 2026–2030.

The NAP considers the impacts of climate change now and into the future and sets out how we will adapt to those impacts under proposed strategies, policies, and actions. The government must release each NAP within two years of the latest NCCRA being delivered.

#### *Reporting of greenhouse gas emissions*

New Zealand reports its emissions annually through the New Zealand Greenhouse Gas

Inventory report released by the Ministry for the Environment. This report:

- is the official basis for measuring New Zealand's progress towards its emissions reduction targets;
- provides inventory reporting for the seven greenhouse gases covered by the UNFCCC (CO<sub>2</sub>, CH<sub>4</sub>, SF<sub>6</sub>, HFCs, PFCs, N<sub>2</sub>O and NF<sub>3</sub>); and
- analyses trends when comparing the annual data with that of previous years.

#### **Emissions Trading Scheme (ETS)**

The ETS is a key tool utilised to meet domestic and internal climate change targets. It is a domestic "cap and trade" system that operates through the issuing and surrendering of New Zealand Units (NZUs). It is designed to incentivise emissions reductions by pricing emissions, while also increasing the removal of atmospheric CO<sub>2</sub> by rewarding those who carry out sequestration.

For each tonne of carbon dioxide equivalent emissions emitted by a participant in the ETS, one NZU must be surrendered to the government. For each tonne of emissions removed, one NZU is issued.

Approximately half of New Zealand's gross emissions are captured by the ETS. It covers businesses and organisations carrying out certain activities in the below sectors.

- Forestry – anyone carrying out deforestation of more than two hectares of pre-1990 forest land.
- Liquid fossil fuels – all importers or producers of petrol, diesel, LPG, or other liquid fossil fuels.

- Stationary energy – all large users of coal or natural gas.
- Industrial processes – all businesses that produce certain products such as steel, aluminium, cement or glass.
- Synthetic greenhouse gases – all importers or manufacturers of synthetic greenhouse gases such as hydrofluorocarbons or perfluorocarbons.
- Waste – all operators of landfills that dispose of more than one kilotonne of waste per year.

Almost all of New Zealand's industries are covered by the ETS, apart from the agricultural sector. The agricultural sector was originally exempt from the ETS on various grounds, including that biogenic gases emitted by the sector are short-lived by nature and there was a view that these should therefore be treated differently, and there was a perception that the industry has limited ability to reduce gross emissions. Notwithstanding this, the government intends to have a pricing system for agricultural emissions in place by 2030, after the current government postponed the previous government's goal to have such pricing in place by 2025.

The "point of obligation" for the surrender of NZUs arises in a manner that prevents the consumers of New Zealand from directly interacting with the ETS. For example, the NZU surrender obligation for fuel arises at the point that the fuel goes through New Zealand Customs, rather than at the fuel pump. This cost is absorbed by the importer and then passed on to the consumer through the price of fuel.

NZUs can be obtained via the following methods.

- Industrial allocation – certain mandatory participants who have a limited ability to pass the

- costs of the ETS on to consumers, or who are trade-exposed to overseas competitors that are not subject to an equivalent carbon tax in their jurisdiction, are eligible to receive an industrial allocation of NZUs annually to help ensure they are not disproportionately affected when compared to other participants.
- Government auctions – every three months, the government runs an auction for NZUs. Auctions are a key tool in the government influencing the supply and price of the units through the setting of quantity limits and reserve prices at each auction.
- Earning units – participants that undertake eligible sequestration activities can "earn" NZUs.
- Secondary market – NZUs are able to be bought and sold on secondary markets and exchanges.

Since the ETS was decoupled from equivalent overseas systems in 2015, overseas units are not valid for surrendering. New Zealand opted for a domestic-only system in an effort to:

- increase its control over the quantity of emissions that can occur and the terms upon which emitting can occur (in turn giving greater control over its ability to meet its climate targets); and
- ensure the environmental integrity of the units surrendered under the system.

### *Implementation of greenhouse gas emissions caps*

New Zealand's greenhouse gas emissions caps are set through its "emissions budget" system.

The ETS is the key tool used to control (and cost) emissions. However, the current design of ETS does not allow for the quantity of units issued under the scheme to necessarily align with the

quantity of emissions permitted under an emissions budget. This is due to the ETS's allowance for an indefinite amount of units to be earned through sequestration activities, which may lead to more units being available during an emissions budget period than the gross emissions permitted under that budget.

#### *Public sector to be carbon neutral by 2025*

The government has committed to the public sector being carbon neutral by 2025. Beginning in 2025, the public sector will be required to measure and publicly report on their emissions. If an agency has not achieved carbon neutrality, it will be required to offset any surplus emissions.

#### **National Policy Statement and National Environmental Standards for Greenhouse Gases from Industrial Process Heat**

The NPS and NES for Greenhouse Gas Emissions from Industrial Process Heat came into force in July 2023. They set out how New Zealand is to achieve net-zero carbon emissions by 2050 and governs the production of greenhouse gases from activities that burn fossil fuels in industrial process heat activities. Industrial process heat is defined as thermal energy used in industrial processes, including manufacturing and processing of raw materials or growing plants and other photosynthesising organisms indoors. It does not include thermal energy used to warm spaces for comfort, such as heating commercial offices.

## **4. National Policy and Legal Regime (Adaptation)**

### **4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors National Climate Policy That Applies to Adaptation**

The NAP seeks to enable New Zealand to prepare for, and adapt to, the effects of climate change. Implementing the NAP requires action across government. A climate change inter-departmental executive board has been established to oversee the NAP (along with the ERP). The NAP is based on the NCCRA, and is produced on recurring six-year cycles.

The Climate Change Commission has a statutory obligation to report to the Minister for Climate Change every two years on the NAP's implementation and effectiveness.

The government has consulted on a draft National Policy Statement for Natural Hazard Decision-Making. If implemented, it will direct how decision-makers consider natural hazard risk in planning decisions for new developments under the RMA.

## **5. Responses to International Developments**

### **5.1 Carbon Markets**

#### **New Zealand Emissions Trading Scheme**

The ETS is a domestic "cap and trade" scheme that operates through the issuing and surrendering of NZUs. It is designed to incentivise emissions reductions by pricing emissions, while also increasing the removal of atmospheric CO<sub>2</sub> by rewarding those who carry out sequestration.

In 2023, the ETS underwent significant change through the introduction of a new activity in the ETS known as “permanent forests” along with other technical improvements to make the scheme easier to participate in. Permanent forests are “post-1989” forests that cannot be clear-felled for at least 50 years with penalties handed out if clear-felling does take place.

Nationally there appears to be growing interest in the area of carbon forestry projects with a greater number of participants in the forestry industry looking to meet the ETS requirements and become involved with carbon trading (including bilateral offtakes). Such groups include indigenous groups (Iwi), local authorities, conservation trusts, and private forest owners.

The Climate Change Commission is required to deliver annual advice to the government on its suggested ETS unit limits and price control settings for the following five years, with its advice for the 2025–2029 period being released on 1 February 2024. The Climate Change Commission has recommended further changes to the way volume limits and prices are set in the ETS in order to accelerate New Zealand’s decarbonisation. The suggested changes aim to reduce the surplus units stockpiled in national accounts through decreasing the volume of units available at auction each year.

The Climate Change Commission has also stated that it does not believe that the ETS (in its current form) adequately incentivises emissions reduction at source. As a result, the government has commenced a general review of ETS, with the scope of the review including a redesign of the recently introduced “Permanent Forest” category. The results of this review are yet to be seen. The government’s ongoing reviews of the ETS will also consider:

- what balance of gross and net emissions reductions is expected to be driven by the current design and settings of the ETS, and what the economic, environmental, and distributional impacts of this balance will be;
- what balance of gross and net emissions reductions the ETS should incentivise in the future;
- how the ETS could be amended to support the government’s preferred balance of gross and net emissions reductions; and
- what levels of net emissions reductions should be from exotic forests and indigenous forests, and how to improve ETS incentives for indigenous afforestation.

## Voluntary Carbon Markets

Voluntary carbon offsetting is not specifically regulated in New Zealand, although the government has issued guidance on what should be adhered to for a voluntary carbon-offsetting claim to be credible. The guidance contains good practice guidelines on what a voluntary carbon offset is, the requirements of what constitutes a voluntary carbon offset, and examples of how voluntary carbon offsetting by organisations and individuals can be applied in the New Zealand context.

The six principles that must be met for any claims of voluntary climate change mitigation require that the mitigation be:

- transparent;
- real, measurable, and verified;
- additional;
- not double used;
- inclusive of addressing any leakage; and
- permanent.

Surrendering units as part of a legal requirement under the ETS is not voluntary climate change mitigation and cannot be claimed as such.

## 5.2 European Union Carbon Border Adjustment Mechanism (CBAM)

Cement, aluminium, fertilisers, electricity, hydrogen, iron and steel exports to the EU from New Zealand will have to report, and eventually pay for (where required), the embedded carbon emissions in those products. This is to occur on the same basis as where those products are exported to the EU by other countries.

While this is estimated to only impact <0.20% of New Zealand's exports at this stage, these sectors will likely be required to pay the carbon tariff (once payments are required) as the price of emitting in the EU's emissions trading scheme has historically been higher than in New Zealand's ETS.

Should the EU decide to extend the scope of CBAM to agriculture in the future, it will have a much greater effect on New Zealand.

## 6. Liability for Climate Change and ESG Reporting

### 6.1 Task Force on Climate-Related Financial Disclosures (TCFD) Mandatory Climate-Related Financial Disclosures

In 2023, New Zealand passed legislation making climate-related disclosures mandatory for large publicly listed companies, insurers, banks, non-bank deposit takers, and investment managers. The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 required around 200 large financial institutions

to start making climate-related disclosures from 1 January 2023.

Reporting is required against climate standards issued by the External Reporting Board (XRB). These climate standards are based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

The Climate Reporting Entities (CREs) subject to the regime include:

- all registered banks, credit unions, and building societies with total assets of more than NZD1 billion;
- all managers of registered investment schemes (other than restricted schemes) with greater than NZD1 billion in total assets under management;
- all licensed insurers with greater than NZD1 billion in total assets or annual premium income greater than NZD250 million;
- listed issuers of quoted equity securities with a combined market price exceeding NZD60 million; and
- listed issuers of quoted debt securities with a combined face value of quoted debt exceeding NZD60 million.

In addition, Crown Financial Institutions with greater than NZD1 billion in total assets under management are required to produce climate-related disclosures.

The goal of mandatory climate-related disclosures is to:

- ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions;

- help climate reporting entities better demonstrate responsibility and foresight in their consideration of climate issues; and
- lead to more efficient allocation of capital, and help smooth the transition to a more sustainable, low emissions economy.

As 2023 was the first year in which CREs were required to publish their climate-related disclosures, it is still too early to assess the influence of the mandatory climate-related disclosures regime on investment and industrial operational decision making. The previous New Zealand government intended to investigate further measures to create greater transparency of the climate related financial practices of CREs, however, it is currently unclear whether the new government will continue this work.

## 6.2 Directors' Climate Change Liability

Under New Zealand's current statutory framework, there are no specific requirements mandating directors to consider the impacts of climate change in their decision making. However, an amendment to Section 131 of the Companies Act in 2023 now states that directors may consider factors other than the maximisation of profit when determining what constitutes the "best interests" of the company. This amendment explicitly includes "environmental factors" as an example of such additional considerations. Although the general consensus was that directors could consider such factors even before the alterations to Section 131, the explicit authorisation that is now included enhances the legitimacy of directors incorporating environmental, social and governance considerations into their decision making processes.

There is currently no New Zealand case law in which a director has been found liable (under the Companies Act, other legislation, or at com-

mon law) for climate change impacts. However, the upcoming hearing of *Smith v Fonterra Co-operative Group Limited*, will go some way in determining the liability of New Zealand companies in relation to climate change impacts. In a recent decision, the Supreme Court of New Zealand declined to strike out claims in nuisance, negligence and a proposed novel tort of "climate system damage" against seven corporate defendants who were each involved in either an industry that emits greenhouse gases or one that manufactures and supplies products that emit greenhouse gases when used. Whether the claim is ultimately successful remains to be seen, but this case represents the potential evolution of the common law on climate change in New Zealand.

## 6.3 Shareholder or Parent Company Liability

A limited liability company is the most common type of company in New Zealand. It is a separate legal entity and is called a limited liability company because the liability of the shareholders is limited to the amounts provided to the company in return for shares.

Shareholders of limited liability companies are not liable for the company's debts or liabilities as the company itself is responsible for its own debts and liabilities. Accordingly, shareholders are not liable for climate change damage or breaches of climate change law.

## 6.4 ESG Reporting and Climate Change Mandatory Climate-Related Financial Disclosures

CREs comprising large publicly listed companies, insurers, banks, non-bank deposit takers, and investment managers are subject to mandatory climate-related disclosures that are based

on the recommendations of the Task Force on Climate-related Financial Disclosures.

## NZX Corporate Governance Code and ESG Guidance Note

The New Zealand Stock Exchange (NZX) requires all Main Board listed companies to report against a set of principles and recommendations, called the NZX Corporate Governance Code (NZX Code). The overarching purpose of the NZX Code is to promote good corporate governance, recognising that boards are in place to protect the interests of shareholders and to provide long-term value. The NZX Code is a comply or explain regime, meaning if an issuer does not report against the recommendation of the code, it must explain why not.

The NZX Code contains a recommendation that an issuer should provide non-financial disclosure at least annually, including considering ESG factors and practices. NZX suggest that if an issuer chooses a formal framework to report on ESG factors, it should report against a recognised initiative such as the Global Reporting Initiative guidelines or Integrated Reporting. ESG reporting should be presented as part of an issuer's corporate governance reporting or as a stand-alone report.

In addition, NZX has a guidance note relating to ESG reporting that is designed to accompany the NZX Code. This guidance note provides a resource to NZX issuers to understand the benefits of ESG reporting, provide information about global frameworks, and support the effective communication of ESG opportunities and risks to investors and other stakeholders.

For CREs, the guidance note provides further guidance in relation to making climate-related financial disclosures.

## 7. Transactions

### 7.1 Due Diligence

For M&A and financing transactions, the level and scope of climate change due diligence will depend on the business or underlying assets being acquired or financed and/or the regulatory framework that applies to the relevant business. Unless a business or the underlying assets are particularly at risk to the effects of climate change, or the entity is regulated by New Zealand's climate change legislation, there is no generally accepted standard of climate change due diligence for M&A or financing transactions. Where climate change due diligence is required, a lender will rely on the relevant borrower to complete the required due diligence, and may seek reliance on any formal reports prepared by the borrower's advisers in this respect.

For a property transaction, climate change due diligence work focuses on consultation with and receiving information from relevant local authorities about a particular property's susceptibility to adverse weather and its effects. Such weather events are becoming increasingly common as a result of climate change and due diligence would typically involve investigations into a particular property's susceptibility to flooding, subsidence, coastal erosion, and other similar weather events. Due diligence would also involve discussions with a vendor of an area to gain insight about historical weather events. The property title will also be checked to see whether any part of the property has been registered in the ETS.

## 8. Climate-Friendly Investment Support

### 8.1 Renewable Energy

New Zealand already has a relatively low-emitting electricity system, with 87% of electricity generated in 2022 coming from renewable sources. To ensure that the country continues to meet demand for electricity while phasing out fossil fuels, the Climate Change Commission has suggested that generation that can supply over 1TWh per year will need to be built. While the new government has discarded the previous government's plans to build a NZD16 billion pumped hydro scheme and hydroelectric battery on the South Island's Lake Onslow, it has signalled an intent to continue to invest in New Zealand's renewable energy infrastructure and to amend the RMA to include measures that will help increase renewable energy. The Bill governing the new government's policies in this area are expected to be introduced at the end of 2024.

### 8.2 Other Support

Under the previous government, New Zealand maintained a "Climate Emergency Response Fund" (CERF), which it applied towards investment in climate-related initiatives. The CERF was funded through both via the government's annual budget and through the proceeds of the ETS. Funds within the CERF were "ring-fenced for use solely on climate related initiatives".

Under the CERF, the government offered financial support to decarbonisation initiatives across the economy, such as the "Clean Car Discount", which provided subsidies for the purchase of low-emission vehicles, and the "Government Investment in Decarbonising Industry Fund" (GIDI Fund), which provided support for businesses to switch from fossil fuels to clear, more efficient energy sources.

The current government has taken a significantly different approach to domestic climate finance. In May 2024, the current government removed the "ring-fencing" of CERF and is now treating its funds as general government funds. The Clean Car Discount and GIDI Fund have both now been discontinued.

Notwithstanding the discontinuation of the above funding, the crown-owned green investment bank, New Zealand Green Investment Finance (NZGIF) has been retained by the new government. NZGIF is a government-owned green investment bank established to accelerate investment that helps reduce greenhouse gas emissions in New Zealand. NZGIF makes independent investment decisions based on an investment mandate incorporating four key principles:

- it invests to reduce emissions;
- it invests on a commercial basis;
- it seeks to attract co-investors; and
- it demonstrate the benefits of low-carbon investment to the market.