
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 3325

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Climate Change Priority Inquiry

MEMORANDUM OF COUNSEL FOR THE CROWN

24 Noema | November 2025



**Te Tari Ture
o te Karauna**
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Waitangi Tribunal

24 Nov 25

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL:

1. This memorandum of counsel responds to the Tribunal's directions of 20 November 2025 and the memorandum of coordinating counsel dated 14 November 2025. It provides:
 - 1.1 An outline and timeline for the various key changes that are occurring.
 - 1.2 Specific responses to the memorandum of coordinating counsel.
 - 1.3 Suggestions about how best to move forward and timeframes for that.
2. The Crown has also undertaken to provide updating evidence with respect to all of these changes by 13 February 2026. Given the scope of this inquiry in terms of subject matter and time to hear, it is not surprising that further updating evidence is required.
3. The Crown acknowledges there are a number of changes occurring to the Climate Change Response Act 2002 (**CCRA**) and is tabularising and listing key materials (Cabinet decisions and briefings) to confirm whether they have already been filed with the Tribunal. The Crown will file that table and any additional key documentation as soon as possible following the fifth hearing week.¹
4. The Crown will continue to provide disclosure of documents when possible, noting the below points about the market sensitivity of the material, especially given the changes to the New Zealand Emissions Trading Scheme (**NZ ETS**) regime.

Outline and timeline of proposed changes

5. Referring to Crown memoranda filed on 12 October 2025, 31 October 2025, 7 November 2025 and 14 November 2025, which cumulatively cover

¹ The Crown notes that it has already filed several tranches of key materials, See the memorandum of counsel for the Crown, dated 12 October (Wai 3325, #3.2.194); Memorandum of counsel for the Crown, dated 31 October 2025 (Wai 3325 #3.2.204); Memorandum of counsel for the Crown, dated 7 November 2025 (Wai 3325, #3.2.210); Memorandum of counsel for the Crown, dated 18 November 2025 (Wai 3325, #3.2.225)

many of the proposed changes, there are two pieces of legislation that are progressing with respect to the CCRA, in particular:

- 5.1 The Climate Change Response (2050 Target and Other Matters) Amendment Bill, which is anticipated to be passed this year. This Bill encompasses three areas.² (1) Changes to the methane target, which were signalled in our memorandum of 12 October 2025. (2) Removal of the requirement for NZ ETS settings to accord with the Nationally Determined Contribution under the Paris Agreement (NDC) – which it is respectfully submitted does not have the impact claimant counsel suggest. (3) Deferral of the decision to set the fourth emissions budget and consideration of whether to reset the first three emissions budgets to 31 December 2027. These decisions on emissions budgets were due to be made before the end of the year.
 - 5.2 The Climate Change Response (Adaptation, Efficiency and Effectiveness) Amendment Bill, which is anticipated to be introduced next year. This Bill includes amendments to the CCRA in relation to adaptation, market governance of the NZ ETS secondary market, efficiency of the CCRA, and other NZ ETS related amendments.³
6. The specific decisions that Cabinet has made for inclusion in the Climate Change Response (Adaptation, Efficiency and Effectiveness) Amendment Bill (anticipated to be introduced next year) are:
- 6.1 **Adaptation:** The Bill will introduce a legislative requirement for councils to develop adaptation plans in priority areas. Regional spatial planning decision-makers will identify locations that require an adaptation plan through developing a spatial plan (subject to passage of the Planning Act). Where a priority location

² Ministry for the Environment “Government resets 2050 biogenic methane target” (12 October 2025) <[Government resets 2050 biogenic methane target | Ministry for the Environment](#)>.

³ Ministry for the Environment “Government announces a series of changes to NZ’s climate change law” (4 November 2025) <[Government announces a series of changes to NZ’s climate change law | Ministry for the Environment](#)>.

has been identified, the relevant territorial authority or authorities will be responsible for leading the preparation of adaptation plans and adopting these plans. This is one of the key actions of the National Adaptation Framework.

- 6.2 **Market governance:** The Bill will make changes to strengthen the market governance of the NZ ETS secondary market, including by requiring the reporting of trading information, introducing market conduct obligations and allowing monitoring agencies to obtain information from market participants, with an associated penalty regime for non-compliance.
- 6.3 **Efficiency:** A review of the CCRA identified three areas for improvements, which are in relation to requirements for Emissions Reductions Plans (**ERPs**) and National Adaptation Plans (**NAPs**), timing and sequencing of reports, advice, decisions and responses, and consultation requirements. There are no changes proposed to the fundamental mechanisms of the CCRA. The changes are aimed at ensuring the Climate Change Commission (**Commission**) and Ministry for the Environment (**Ministry**) officials are focused on what will have the highest impact without undermining the intent and integrity the CCRA.
- 6.4 **Biennial NZ ETS settings:** The Government has decided to move from the annual NZ ETS settings decisions process to a biennial NZ ETS settings process. This means that NZ ETS settings decisions will be made every two years after the Bill passes. This decision promotes efficient decision making, while maintaining market stability and confidence and the need for periodic updates to NZ ETS settings. The 2026 ETS settings process will proceed as planned as the change will not come into effect until the legislative amendment has passed.
- 6.5 **Industrial allocation:** The Government has reviewed how it allocates industrial allocation to NZ ETS participants. It found that two components of the current process – allocative baseline

reviews and eligibility reviews – are overly complex and risk disincentivising firms from decarbonising. This is because these two processes mean it is possible for an allocation to be reviewed and reduced following decarbonisation investments, which then impacts the financial viability of making that investment. The proposal is to remove these two reviews, except for in a limited number of technical exceptions. Phase-out reviews will be retained and will become the primary tool for managing industrial allocation going forward.

6.6 **Carbon removals:** The Bill will amend the CCRA to add “carbon removal activities” as an activity that can be recognised under the NZ ETS.⁴ This change won’t immediately enable new carbon removal activities to be recognised and rewarded in the NZ ETS. It will, however, enable this in the future by simplifying the process and making it faster.

6.7 **Technical NZ ETS amendments:** These make changes to how forestry is administered in the NZ ETS to clarify expectations for participants and enable timely regulatory action when issues arise. This includes changes to allow flexibility to re-establish forests after significant disruptions, such as a severe weather event. This will help foresters avoid deforestation liabilities when clearance occurs due to events beyond their control. The Government is also taking this opportunity to make some technical changes to improve the operation of the NZ ETS, such as by including the import of carbon dioxide in the NZ ETS and making minor adjustments to the compliance regime.

7. **Treaty clause review:** In September 2024, Cabinet decided on a review of legislation that contains references to Treaty/te Tiriti principles. This includes section 3A of the CCRA. This review is ongoing and no decisions on amendments to any legislation have been made yet.

⁴ Memorandum of counsel for the Crown, dated 7 November 2025 (Wai 3325, #3.2.210) at [6].

Timing of decisions on these workstreams

8. Cabinet made decisions on market governance amendments on 31 March 2025 and the current proposals were made public on 27 May 2025.⁵ Decisions on adaptation and other CCRA amendments were made by Cabinet on 22 September 2025.

Timing of updating Tribunal and filing Crown evidence

9. In memorandum-directions dated 3 November 2025, the Tribunal directed the Crown to file a memorandum as soon as possible regarding any significant policy or legislative developments should, or as they occur, and to do so on an ongoing basis.⁶ Crown counsel has endeavoured to do this throughout the inquiry, including prior to 3 November 2025.
10. The memorandum of coordinating counsel suggested that when filing its evidence at the end of August 2025, the development of proposed amendments was already well advanced and the Crown should have signalled to the Tribunal that significant legislative changes were being considered, and sought an extension of filing dates to allow the final decision on the changes to be reflected in Crown evidence.⁷
11. In the context of the shifting landscape, and the scope and volume of Crown evidence necessary to respond to claims and evidence, the Crown filed evidence on the regime as it stood and has since then undertaken to file updating evidence closer to the Crown hearing dates. Counsel alluded to the need for this in the Crown memoranda filed on the changes to the target and the CCRA on 12 October and 7 November.
12. Within the wide scope of this inquiry the Crown has kept and continues to keep the Tribunal updated as best it can on key proposed changes to the legislation and key decisions being made under that legislation. Crown

⁵ The proposals were signalled in the joint brief of evidence of Bryan Smith and Simon Mandal-Johnson, (Wai 3325, #A140). See at [247.3], which refers to consultation “to inform work on improvements to the market governance of the NZ ETS”. Work on market governance has been public since June 2023, and the current proposals were made public on 27 May 2025. See also Ministry for the Environment “Market Governance for the Emissions Trading Scheme” (27 May 2025) <[Market governance for the New Zealand Emissions Trading Scheme | Ministry for the Environment](#)>.

⁶ Memorandum-directions of the Presiding Officer following hearing four of priority inquiry and other matters arising, dated 3 November 2025 (Wai 3325, #2.6.17) at [58].

⁷ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [8].

counsel understands it will be necessary to file further updating evidence on the proposed changes to the CCRA, including the changes proposed to the target, given the length of time spanned by this inquiry (largely attributable to the scale of the inquiry and available hearing time). The Crown has also already undertaken to do so, proposing a filing date of 13 February 2026, which the Tribunal confirmed on 20 November 2025.⁸

13. Climate policy decisions related to the NZ ETS are market sensitive, meaning that information on the policy as it develops is not publicly known, as it could influence the trade and price of NZUs. In this context, it is important that any information about policy change is released to the entire NZ ETS market at the same time, to avoid information asymmetries and corresponding market impacts. This limits the ability of the Crown to make disclosures before the information is ready for wider public release. This was the case for the changes that included:
 - 13.1 Removal of the requirement for NZ ETS settings to accord with the NDC.
 - 13.2 The majority of CCRA amendments being proposed given they signal climate policy direction and so impact market conditions.
14. The Crown has previously updated the Tribunal on the 2050 target, in light of the requirements under section 5U of the CCRA requiring the Minister of Climate Change (**Minister**) to advise the Commission in writing of the Government's response to its advice on its review of the 2050 target under sections 5S and 5T.⁹ This response was due to the Commission by 21 November 2025.¹⁰ The Minister will make the response publicly available and present a copy to the House.
15. Counsel note the proposed changes to the CCRA come six years after the enactment of the Climate Change Response (Zero Carbon) Amendment Act

⁸ Memorandum of counsel for the Crown, dated 7 November 2025 (Wai 3325, 3.2.210) at [26].

⁹ Climate Change Commission "Final Report: Review of the 2050 emissions target including whether emissions from international shipping and aviation should be included" (November 2024) <[Final report: Review of the 2050 emissions target including whether emissions from international shipping and aviation should be included » Climate Change Commission](#)>.

¹⁰ Memorandum of counsel for the Crown, dated 29 May 2025 (Wai 3325, #3.2.123).

2019, which implemented much of the regime in question. Some of these changes are a response to learnings from the regime as originally enacted and are intended to amend the system to improve its efficiency and effectiveness. The fundamental architecture established by the Zero Carbon Amendment Act is preserved.

Responses to coordinating counsel’s memorandum

16. The Crown disagrees with the assertions made by co-ordinating counsel in the 14 November memorandum. A brief response is set out below; however, counsel anticipates this will need to be considered further after the Crown files updating evidence in February next year.

Consideration of Treaty impacts

17. Coordinating counsel assert the “delinking” of the NZ ETS from the NDC “strikes at the heart of the understanding that Māori landowners have, that their forests would be placed under the NZ ETS without their agreement, because an international crisis has arisen, and there would be some compensation for these new restrictions through the NZ ETS scheme and its role in resolving the international crisis”.¹¹
18. The Crown disagrees with this assertion. The proposed change is limited to one part of the legal test that any future NZ ETS settings must meet: to remove the NDC as a component of the accordancy test as set out in s 30GC of the CCRA (and consequential technical amendment). This has the impact of:
- 18.1 Focusing the scheme on domestic targets and budgets.
- 18.2 Reducing uncertainty around timelines for securing future offshore mitigation.
19. MFE has recently provided guidance in response to market concerns about this change.¹²

¹¹ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [13]-[14].

¹² Ministry for the Environment “Further Information: Removing the Requirement for NZ ETS Settings to Accord with New Zealand’s Nationally Determined Contribution under the Paris Agreement” (November 2025) <[Further-Information-Removing-the-requirement-for-NZ-ETS-settings-to-accord-with-New-Zealands-NDC-under-the-Paris-Agreement.pdf](#)>.

20. The Government wants to ensure this change is in place ahead of next year's NZ ETS settings process so that the market has the clarity it needs. The practicalities of passing legislation before that process begins in early 2026 means it was not possible to consult on these changes.
21. The annual NZ ETS settings process will be undertaken in 2026. The Commission is currently working on its advice, and once received, the Minister will consult on possible options. This consultation is likely to occur in early 2026.
22. The NZ ETS remains the Government's primary tool for reducing emissions domestically. The regular NZ ETS settings process will continue in largely the same manner as it has prior to this proposed legislative change, albeit on a less frequent timetable due to a related decision to make the settings process biennial.
23. On ERP2 amendments, the only decision that has been made is to publicly consult in response to the revised approach to reducing agricultural emissions. Further, some consultation with iwi and Māori has been undertaken, with a specific engagement session held on 13 November 2025.

Opportunities for feedback on ERPs and NAPs

24. Coordinating counsel assert the proposals to amend ERPs and NAPs will result in less lead-time, a less visible process and little opportunity for feedback to ensure any guidance from central government to local government in terms of mitigating or addressing the impacts of climate change on Māori at a local level.¹³
25. No change is proposed to the requirement for ERPs to set out a strategy to mitigate the impacts of climate change on iwi and Māori. There also remains a requirement for the Government to adequately consult on an ERP, including with iwi and Māori.

¹³ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [20].

26. The proposed amendments to the CCRA are intended to ensure that the regime is working efficiently and effectively. This reflects the complexity caused by the current requirements, for example, in the development of an ERP, and have resulted in additional processes and resourcing to both interpret the requirements and develop content to satisfy them. The Crown notes that any aspects of the current formal requirements could still be included at the discretion of the Minister.
27. The primary change to the requirements for NAPs is the creation of a new legislative avenue for the Minister to amend a NAP for a more than 'minor or technical change'. The need to establish a legislative process by which this can be achieved is necessary as a NAP should be able to evolve with climate risks and emerging opportunities and align with Government priorities.
28. There are associated changes to the Government's response to the Commission's recommendations in the NAP progress reports. At present, NAP actions are updated as part of the Government's response to the Commission's recommendations in each progress report. Currently, this happens every two years and will change to once every 6 years. Given the timing (every two years), reliance on that mechanism does not provide a sufficient opportunity to update a NAP in a timely manner. The policy rationale for the change to six years is to improve the value of the monitoring function. The second progress report is due at the same time as the National Climate Change Risk Assessment (**NCCRA**), which creates a resourcing peak, and the third progress report is due at the same time as the next NAP and will not be useful in informing a new NAP.
29. Under the proposals, when making any changes to the NAP, the Minister is required to consider effects on iwi/Māori of climate change and how the NAP addresses the most significant risks in the most recent NCCRA.¹⁴ The

¹⁴ The requirement to consider the effects on iwi/Māori is at Climate Change Response Act 2002, s 5ZS(4)(a)-(b). The requirement to consider how the NAP addresses the most significant risks is at s 5ZS(2)(d).

updated NAP would be made publicly available. There is also no change to the requirement to publicly consult when first developing a NAP.

Impact of proposed changes – Māori participation in carbon market

30. The proposed amendments to the CCRA also include market governance requirements that will enhance the transparency and integrity of the NZ ETS secondary market, as well as other changes to ensure the NZ ETS is operating effectively. A well-functioning NZ ETS and carbon market support New Zealand's climate mitigation, which in turn supports Māori as participants in the market, particularly through forestry. The market governance provisions are intended to support all participants in the NZ ETS market.

List of workstreams and timelines

31. Coordinating counsel sought a direction that the Crown disclose all relevant materials concerning the proposed amendments and related policy changes.¹⁵
32. As noted above, the Crown is undertaking an exercise to tabularise and list key decision papers (Cabinet decisions and briefings) and confirm whether they have already been filed with the Tribunal and will file that table and any additional key documentation as soon as possible following the fifth hearing week.¹⁶

Suggested way forward

33. Coordinating counsel assert that the proposed amendments substantially alter the foundation on which the statement of issues and claimant evidence was based.¹⁷ Counsel have asked the Tribunal to seek submissions on the extent of the changes, the extent of the impact on the

¹⁵ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [9].

¹⁶ The Crown notes that it has already filed several tranches of key materials, See the memorandum of counsel for the Crown, dated 12 October (Wai 3325, #3.2.194); Memorandum of counsel for the Crown, dated 7 November 2025 (Wai 3325, #3.2.210); Memorandum of counsel for the Crown, dated 18 November 2025 (Wai 3325, #3.2.225)

¹⁷ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [11].

current inquiry (including statement of issues) and whether amendment to the statement of issues is required.¹⁸

34. The Crown submits that the proposed amendments do not alter the foundation on which the statement of issues were based and do not require fundamental change to the four 'parent' issues identified by the Tribunal.¹⁹ The proposed changes are to the CCRA and will be for the Crown to explain and justify ultimately in evidence next year.
35. The issue questions are general in nature and do not refer to specific legislation. They are broad enough to encompass legislative and policy changes, including the proposed amendments.
36. The Crown also submits that while some aspects of the Crown evidence may need to be updated, the claimant evidence already heard by this Tribunal is largely if not entirely unaffected by the proposed amendments to CCRA, and any changes or additional aspects claimants wish to raise may be dealt with through supplementary briefs.
37. Moreover, while some of these proposed amendments are new information, others, such as changes to the 2050 target have been signalled for some time, so the fact that there will be changes should not be a surprise.²⁰

24 Noema | November 2025



J Prebble / N Fong / G Seeley / A McTaggart
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel

¹⁸ Memorandum of coordinating counsel, dated 14 November 2025 (Wai 3325, #3.2.216) at [26(c)].

¹⁹ Tribunal Statement of Issues (Wai 3325, #1.4.3).

²⁰ Memorandum of counsel for the Crown, dated 29 May 2025 (Wai 3325, #3.2.123).