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Emission control

What the Zero Carbon Act means for business

One of the most significant pieces of new legislation introduced last year was the Climate Change Response (Zero Carbon) Amendment Act 2019, more commonly referred to as the 'Zero Carbon Act'.

The legislation outlines the government's targets over the next 30 years (by the year 2050) of net greenhouse gas emissions of zero and to reduce methane emissions by up to 47%.

According to the Ministry for the Environment, the Act 'provides a framework by which New Zealand can develop and implement clear and stable climate change policies that:

- Contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5°C above pre-industrial levels, and
- Allow New Zealand to prepare for, and adapt to, the effects of climate change.'

Key points

Under the Act, the government has committed to:

- Set a new domestic greenhouse gas emissions target for New Zealand to reduce net emissions of all greenhouse gases (except biogenic methane) to zero by 2050 and reduce emissions of biogenic methane to 24–47% below 2017 levels by 2050, including to 10% below 2017 levels by 2030
- Establish a system of emissions budgets to act as stepping stones towards the long-term target
- Develop and implement policies for climate change adaptation and mitigation, and
- Establish a new, independent Climate Change Commission to provide expert advice and monitoring to help keep successive governments on track to meet long-term goals.

The Act was modelled on the 2008 Climate Change Act in the UK, which helped reduce that country's greenhouse gas emissions by more than 44% compared with 1990 levels.

The ambitious new targets mean that New Zealand cannot maintain the current levels of CO^2 emissions. Nor is it enough to offset our emissions by planting millions of trees, which has largely been the way New Zealand governments have dealt with the issue in the past. Instead, we will need to make some massive cuts to our carbon usage over the next 10 to 20 years.

Implications for business

Reporting obligations have been imposed on local authorities, and public service and government-controlled organisations. However, the government is currently considering feedback from consultation in relation to companies and climate-related financial risks.

With moves to restart the economy post-COVID, there is the opportunity to seriously rethink our options as a nation. While the path forward may be uncertain, the climate message remains clear: 'We have to change.' Importantly, the new emissions targets will need to be factored into any future decisions around strategy, infrastructure, systems and investments.

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MIKE LUCAS LAW FIRM
BARRISTERS AND SOLICITORS

It is worthwhile for businesses (and all of us, really) to consider how we can reduce our emissions because, at some point, we will all be encouraged to look at how we consume resources and to make some changes.

Be proactive

Before the government starts issuing directives, organisations can choose to be proactive and take a critical look at how they run their businesses. Businesses need to understand their carbon footprint and use that knowledge to help them identify areas for improvement and innovation.

'Carbon hotspots' could include supply chains (if you are buying raw materials from overseas, is there a way you can do that more efficiently?), distribution, the sustainability of your business premises including air conditioning, electricity usage and so on, staff travel requirements including how you commute to work and domestic/international flights.

It is probably one of the few times in our collective history when all businesses will be forced to seriously consider every aspect of their existence.

There are decisions that can be made in a business, irrespective of beliefs and politics, that can have positive impacts. Being environmentally-friendly doesn't always have to cost financially. It could be good for the bottom line to consider how you do things. Yes, there will be costs involved, but the Zero Carbon Act also creates opportunities for innovation.

Pre-COVID, many businesses were already taking positive steps to make changes and get ahead of the curve by introducing initiatives such as electric vehicle sharing, charging networks and renewable energy options.

The Zero Carbon Act in the new normal

The spread of COVID has impacted every person around the globe. As New Zealand grapples with the aftermath of lockdown, we are faced with new economic, social and cultural realities.

From an environmental perspective, during lockdown there were many positive stories of clearer waters, mountains once obscured by pollution were visible and motorways were almost empty. Consumer spending plummeted, leading to less household waste. It was also reported that nitrogen dioxide pollution levels dramatically decreased across Europe.

These improvements are contrasted by carbon dioxide levels in the atmosphere at near record levels. At home, we have also seen less-than-favourable changes in street-side recycling as local authorities struggle to adequately process materials domestically.

The environment will also be impacted by the reduction in the cost of petroleum, which foreshadows cheaper plastics. Depending on demand, this may not bode well for the environment as plastic and gas are becoming more competitive against renewable energy and products. At present, the true impact of cheaper plastic and gas on the environment is uncertain; however, we are clearly seeing signs of how drastically the environment can change for the better, or perhaps worse.

As governments around the world pump trillions of dollars into their economies in an attempt to reduce the severe hardship on their citizens and 'restart' economies, many policy-makers and business owners will be faced with having to make unprecedented decisions that will significantly impact the environment.

Stimulus packages offered

In a 7 April 2020 letter to the Climate Change Minister, Dr Rod Carr (Chair of the Climate Change Commission) offered assistance as the government introduced various stimulus packages to kickstart the economy. In particular, the Commission suggested looking at the stimulus packages through a 'climate change lens.' Dr Carr offered six principles to help the government maintain its legislative goals:

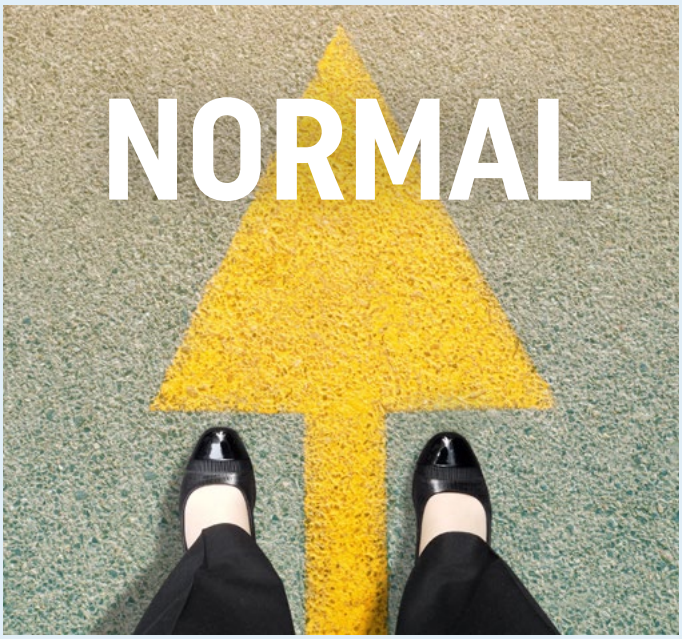
1. Consider how stimulus investments can deliver long-term climate benefits
2. Bring forward transformational climate change investments that need to happen anyway
3. Prepare our workforce for the jobs of tomorrow
4. Work in partnership with iwi and work with the commercial sector to encourage private environmental development
5. Maintain incentives to reduce emissions and adapt to climate change, and
6. Change how we measure the success of economic recovery.

Dr Carr's letter suggests the benefits of implementing the principles will pay dividends now and in the future. Such benefits included clean energy and energy efficiency, improved transport systems, sustainable land use, resilient infrastructure, an empowered workforce, accelerated innovation and improved wellbeing.

In many instances, these principles can be layered over the decisions made by business owners. Unfortunately, businesses and decision-makers may be forced to choose between options that are not environmentally desirable, but less expensive, and those that are more costly but benefit our goals under the Zero Carbon Act and that ultimately address climate change. The difficulty with this situation is that a decision that eases the economic burden now may just be a patch on another problem that needs to be readdressed in the near future.

Irrespective of COVID's pervasive impact on our lives, the Zero Carbon Act means New Zealand businesses have to dig deeper and assist in transitioning New Zealand to a carbon-zero economy by 2050. While the costs of the virus across business and society are crippling, it may be a timely opportunity to create and shape a more environmentally-conscious future.*

Editorial:
Our new normal post-COVID



As I write this editorial, the COVID-19 pandemic has had, and continues to have, a long-lasting effect on New Zealand and the rest of the world. Everyone has been affected in some way – to a greater or lesser degree.

During lockdown, our physical environment changed with significantly less pollution and fewer emissions. It was quieter with only a handful of vehicles on the road, and we could more easily see and hear our native birds. Our focus altered to our home and families, going for long walks and enjoying each other's company.

We have new words in our vocabulary – bubbles, clusters, COVID, zoom meetings, rental abatement, wage subsidies, essential workers, self-isolation and social-distancing.

Nearly 1,200 have contracted the virus and 22 people have died here in New Zealand.

Back to 'almost normal'

We are now in Alert Level 1 where day-to-day life has almost returned to what used to be normal. We can enjoy close proximity to our family and friends, return to work in the office, and relish going out to a café. Buying goods in a bricks-and-mortar shop is possible again, as is playing sport, going to the cinema, travelling within the country and hopefully planning an overseas trip for 2021. Our border, however, remains closed.

Despite a return to almost normal, for most of us life has changed considerably. We are particularly aware of the need to wash our hands more often and some are wary of getting too close to others in a crowd. Now we all sneeze or cough into our elbows and know that if we are feeling unwell we must stay home. Staying well and managing our health will be the focus of our lives for months to come.

Impact on business

For those of us in business, the landscape has changed significantly. COVID has had an impact on every business – for better or worse.

The tourism, retail and hospitality industries have been ravaged. Many other sectors have been profoundly affected by the reduction in demand and the changes in the economy. Although businesses have welcomed the government's rapid response in terms of the wage subsidy schemes, assistance with loans and other initiatives, it will not be sufficient to save many of them.

COVID has, however, provided opportunities to work in a different way. With many employees working from home during lockdown, having a home office has now become a serious option for many; it has made many of us think hard about the way in which we want our businesses to operate in the future.

We have to consider how we retain the culture of our workplaces when many of our employees may not physically be present in one place. Continuing to nurture the collegiality and collaboration that is an integral component of developing innovative products and services is important. We need to do this in a way that is a win-win for all.

The pandemic environment also enabled some businesses to be nimble, and their creativity resulted in the development of new products and services in the changed environment. New apps, and new online shopping and delivery options came about. This ability to maximise opportunities and think differently about the way in which work happens will be critical to how businesses ensure they have a sustainable future.

Out of a black COVID cloud, it is good to see a silver lining for many in business and in our personal lives.

In this new normal, if you would like a sounding board on how to adapt your business or personal affairs, or you are looking for some advice, your NZ LAW member firm can offer guidance as you grapple with this new post-COVID environment.

We are here to help.

Stay safe, stay healthy and be kind.

Mark Henderson
Chair, NZ LAW Limited

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AN ASSOCIATION OF INDEPENDENT LEGAL PRACTICES

Charities in New Zealand

Charities play an important role in our society to help the disadvantaged, support specific causes or to advance knowledge. In New Zealand we have more than 27,000 registered charities, with 230,000+ volunteers and 180,000 paid staff[1]. Many of these charities are structured as trusts which can be incorporated and run as a trust board by the trustees. Others are structured as incorporated societies or companies, or as unincorporated bodies. These types of charities are run by a board with specific obligations and responsibilities.

The Charities Act 2005 (which is currently under review) regulates the Charities Register and sets out the statutory rules relating to registered charities. Those rules include a requirement for registered charities to report, on an annual basis, to Charities Services (a division of the Department of Internal Affairs).

Where a charity is a trust, the Charitable Trusts Act 1957 provides for the trust to be incorporated as a trust board so it is similar to a limited liability company. As an incorporated board, the trust has the advantage of being a corporate entity, so that the trust itself (rather than the trustees in their own names) can buy and sell property, have bank accounts, mortgages and own a variety of assets and investments.

A trustee's role

Whether a charity is a trust, incorporated society or company, the fundamental duties for trustees or board members remain the same. That is to understand the charitable purpose and to comply with the trust deed or constitution (sometimes called the 'rules'). The charitable purpose of the trust, society or company should be clearly defined in its trust deed or constitution.

A trustee or board member should have a good understanding of the rules within the trust deed or constitution. These documents act as a roadmap for making decisions on how to advance the purposes of the charity and how the charity is to be operated. For example, a charity established to improve the education of children living in poverty could be advanced by supporting a programme that provides breakfast for children in school. There may be limits on how the charity's funds may be spent, how many board members need to agree on significant investments, how many meetings will be held a year and how the charity's assets are managed.

In addition to this, the trustees or board members of a registered charity must comply with the Charities Act 2005, and other applicable legislation such as the Charitable Trusts Act 1957, Incorporated Societies Act 1908 and the Companies Act 1993.

Annual requirements

Every charity that is registered on the Charities Register is required to file an annual return with Charities Services within six months of its balance date. This can be filed online.

There are different levels of financial reporting depending on the charity's 'tier'; the tier bands are based on their operating payments or expenses over the last two tax years. All reports must include performance reports which show how a charity's purpose was advanced.

Tier 1 is for charities with more $30 million in expenses or that are publicly accountable (that is, they hold assets or money on behalf of others). Tier 2 covers charities spending between $2 million and $30 million; Tier 3 is for those with expenses within the $125,000 to $2 million range; and Tier 4 is for charities with expenses under $125,000.

Most New Zealand charities (97%) are able to use either Tier 3 or 4. Tier 1 and 2 charities must complete and file financial reports prepared in accordance with accounting standards. There are different, more simplified, formats for financial reports for Tier 3 and 4 charities. Charities Services **www.charities.govt.nz** has helpful templates and tutorials to guide charities through the different processes of what needs to be included and how to file the reports.

More for trustees

A less tangible trustee duty is to consider the sustainability of the charity and work towards ensuring its long term viability. Risk management also plays a vital role on a board as trustees must not only consider financial risks, but also other risks such as reputational.

As trustee obligations, responsibilities and reporting requirements evolve, boards should ensure they appoint trustees who offer a variety of skills, knowledge and experience.

A trustee role should not feel onerous but should be viewed as helping your charity to provide its community with benefits for years to come*

1 Department of Internal Affairs.

Privacy in an ever-evolving digital age

New Privacy Act comes into force in December

The Privacy Bill is on its third reading in Parliament and will now become law on 1 December 2020. It will repeal and replace the current Privacy Act 1993, and will update the law to reflect the continually-evolving needs of the digital age.

Why new legislation?

Your personal information is stored in many places by organisations such as businesses, government agencies, healthcare providers, financial institutions, social network platforms and telecommunications companies (called 'agencies' in the new legislation).

Technology has enabled large quantities of personal information to be stored, retrieved, used and disclosed; the current law does not address how your personal data can be properly protected. The new legislation aims to provide more protection of personal and sensitive information.

Key changes

The changes relate to both agencies and individuals. Major features are:

1. Reporting data breaches: if an agency has a privacy breach posing a risk of serious harm to people, it must notify the people affected and the Privacy Commissioner
2. Compliance notices: the Privacy Commissioner will be able to issue compliance notices to an agency to require it to do something or stop doing something, to comply with privacy law
3. Decisions on access requests: if a complaint is made about being unable to access certain information, the Privacy Commissioner will make a decision on the complaint. However, this decision can be appealed to the Human Rights Review Tribunal
4. Strengthening overseas connections: at least one permitted category must be satisfied for an agency to disclose information to an overseas agency. In terms of cloud storage, this isn't considered a disclosure for the purposes of the privacy principles, but the disclosing agency is responsible for the cloud storage provider's compliance with the Act, and
5. New criminal offences: these include misleading an agency to obtain access to another person's information and destruction of documents by an agency which has been asked to provide information by the person entitled to it. The level of fines has been raised to a maximum of $10,000.

What is a privacy breach?

A privacy breach occurs when someone collects, uses, stores or discloses personal information contrary to the privacy principles, such as accessing personal information without permission, failing to comply with the request for specific information or not using your contact details for the purpose for which they were collected.

An example of a privacy breach could be when an unauthorised person accesses your personal information, such as your banking details, and your credit card is used unlawfully.

In business, a breach could occur when an agency incorrectly disposes of confidential documents containing personal information, and that data becomes public.

Privacy laws are important

The recent COVID requirements, where for example, information was provided to a restaurant when dining out, have highlighted the importance of privacy laws. We, as individuals, have become more aware that we entrust others with our private data and, as a result, we have an increased awareness of compliance with privacy legislation in New Zealand. *

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NZ LAW member firms have agreed to co-operate together to develop a national working relationship. Membership enables firms to access one another's skills, information and ideas whilst maintaining client confidentiality.

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Postscript

Smoking in motor vehicles with children now banned

Smoking in motor vehicles when children under the age of 18 years old are present is now prohibited. The passing of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 has made this an offence.

Police will now have the discretion to issue on-the-spot fines of $50 for those who are caught smoking in cars with children, or they may issue warnings or refer people to stop-smoking agencies.

The Associate Minister of Health, the Hon Jenny Salesa, says that children are especially vulnerable to the harmful effects of second-hand smoke due to their smaller lungs, higher respiratory rate and more immature immune systems. ✱

'Triangular' employment legislation in force

On 27 June 2020, the Employment Relations (Triangular Employment) Amendment Act 2020 came into force. This legislation addresses the situation where a person is employed by one organisation but actually works for a third party business or organisation. Examples of this 'triangle' situation are where a person is seconded to another organisation to work for a period, or a recruitment company pays a person's wages but they are working in another business or in a temporary 'cover' position.

Until now, employees have only been able to bring a personal grievance against their employer, not the third party for whom they are doing their day-to-day work. Now, both the employer and third party could be added to the claim (in cases where the behaviour or actions of the third party contributed to the issue), and both could be potentially responsible for providing remedies to the employee. ✱

Looking after your mental health during COVID

The last few months of the COVID pandemic have affected every New Zealander in some way.

As we moved down through Levels 4, 3, 2 and 1 many people found that their mental health deteriorated – to a greater or lesser degree. Whether you're feeling a bit blue or are experiencing depressive episodes, there are some useful tips on the COVID website **www.covid19.govt.nz**

- Stay connected
- Stick to routines where possible
- Check in with other people who might need help
- Seek accurate information from legitimate sources
- Don't be afraid to seek further professional support, and
- Continue existing mental health treatment if possible.

Take care and look after yourselves. ✱

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