

9 May 2023

Ministry for Primary Industries
Wellington

Re: Consultation on amendments to the Climate Change Response Act 2002 under the Severe Weather Emergency Recovery Legislation Act 2023

1. Introduction

- 1.1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the amendments that are proposed to be made to the Climate Change Response Act 2002 (the **CCRA**) by Order in Council, under the new powers provided by the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERLA**).
- 1.2. This submission has been prepared with input from the Law Society's Climate Change Law Subcommittee.¹

2. Concerns with extent of proposal

- 2.1. When the SWERLA was before the select committee, the Law Society (along with other submitters) raised concerns with the potentially wide scope of the 'Henry VIII' powers contained in section 7, which allow for primary legislation to be overridden by order in council.
- 2.2. In response to some of the concerns raised, the Select Committee recommended changes to clarify that an order can be made for specific geographic locations, to ensure that it is no broader than necessary to achieve its aim. This change is reflected in section 8(1)(a)(ii) of the SWERLA.
- 2.3. In the Law Society's view, the length of extensions to the notice and emissions returns requirements proposed in the consultation document are appropriately limited. However, the Law Society has some concerns regarding whether it is sufficiently targeted to only those individuals relevantly impacted by the severe weather events listed in the SWERLA.
- 2.4. Under the proposal, the extensions would apply to anyone who has forests or whose primary residence is in one of the district councils or unitary authorities set out in section 4 of the SWERLA. This effectively covers the majority of the North Island, and includes a number of regions which were not significantly affected by the severe weather events. The consultation document does not set out how many individuals would likely be captured under the proposal. The extensions would apply automatically to every individual or plot of land within

¹ More information regarding this Subcommittee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/environmental-law-committee/climatechange-law-committee/>.

this area, with individual circumstances not being taken into account. The effect of this is that the extension would be likely to apply to many individuals who would be capable of complying with their obligations under the CCRA.

- 2.5. In the Law Society's view, the powers in the SWERLA should be treated with extreme care, and should not simply adopt a 'default' position of applying to all individuals or areas that could be covered under the Act. We consider that the approach taken in the consultation document is insufficiently targeted and therefore inconsistent with the requirements in s 8(1)(a)(ii).
- 2.6. There are several ways these concerns could be addressed:
 - (a) By allowing the extensions on application by an individual within the areas specified in the SWERLA. As noted in the consultation document, the CCRA already allows for extensions of up to 20 working days for emissions returns under s 119. While labour intensive, this would provide the greatest certainty that the relief is targeted to individuals who have been adversely affected and are unable to meet their obligations under the CCRA;
 - (b) Alternatively, the proposal could be specifically targeted to the district councils that were most obviously affected by the severe weather events (rather than the blanket approach taken in the original proposal).

3. Next steps

- 3.1. We would be happy to discuss this feedback further, if that would be helpful. Please feel free to contact me via the Law Society's Law Reform & Advocacy Advisor, [Dan Moore](#).

Nāku noa, nā



Caroline Silk
Vice-President