



BRF-5114: Update on FEC inquiry and next steps for the adaptation framework

Date submitted: 8 August 2024

Tracking number: BRF-5114

Sub Security level: Classification

MfE priority: Urgent

Actions sought from Ministers		
<i>Name and position</i>	<i>Action sought</i>	<i>Response by</i>
To Hon Simon WATTS Minister of Climate Change	Agree to discuss this briefing with officials on 12 August	12 August

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (ministerials@mfe.govt.nz).

Appendices and attachments
Appendix A: Legislation development process
Appendix B: MCC meeting with MfE officials 12 August: Early strategic choices

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
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Minister's comments

BRF-5114: Update on FEC inquiry and next steps for the adaptation framework

Key messages

1. This briefing provides an update on the Finance and Expenditure Committee (FEC) inquiry into climate adaptation and sets out process matters and next steps for the adaptation framework.
2. The Departmental Report for the FEC inquiry was delivered to the Select Committee on 7 August. The report contains a summary of points raised in submissions, as well as advice that aims to support the FEC in preparing its own report. A brief overview of that advice is provided in this briefing and the Departmental Report has been provided to your office for your information.
3. Process steps from here include:
 - The FEC is due to deliver its report on 1 October, pending Business Committee approval of the report-back extension. Their report will be written without officials' involvement, but likely draw on the advice provided to some extent. If officials are given an indication of what the FEC report may contain, we will provide you with an update on it.
 - The Independent Reference Group (IRG) will continue to support officials to develop policy positions on the adaptation framework.
 - Decisions to guide policy direction will be required from yourself and Ministerial colleagues regarding objectives, principles and trade-offs.
 - Decisions will also be required regarding the content of the Cabinet paper to be delivered in November, including detail on legislative proposals, and which parts of the adaptation framework can be delivered via non-legislative changes.
 - Appendix A outlines the steps that follow Cabinet decisions, including a likely period of 4 months for drafting legislation.
4. We have been in touch with the newly established Ministry for Regulation about the requirements for Regulatory Impact Analysis (RIA) to accompany proposals to Cabinet for legislation. They have indicated tightening expectations for RIA. In general, to meet RIA requirements, there will have been consultation with affected parties on the problem definition, the range of feasible options, and the impacts of the options. The magnitude of the proposal, including who is likely to be affected, is relevant to who and how to consult.

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Recommendations

We recommend that you:

- a. **Agree** to discuss this briefing with officials on 12 August

Yes | No

Signatures

Katherine Wilson
General Manager – Adaptation
Ministry for the Environment
8 August 2024

Hon Simon WATTS
Minister of Climate Change

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Purpose

7. This briefing provides an update on the progress of the Finance and Expenditure Committee's (FEC) inquiry into climate adaptation and details next steps for the development of an adaptation framework.

Analysis and advice

FEC Inquiry

8. On Wednesday 7 August, officials from the Ministry for the Environment (MfE) and Treasury discussed the Departmental Report (the report) with the FEC. The report is the main product which officials prepare for any select committee process and consists of two main parts. The first part of the report provides a standard summary of the oral and written submissions to the FEC. The second part is the advice section and aims to support the FEC in preparing its own report. The advice focuses on the following aspects of the inquiry's terms of reference:
 - the nature of the climate adaptation problem in New Zealand. Officials have suggested that cross-party agreement on the problem definition would help move the adaptation discussion forward
 - options for high-level objectives and principles to inform the design of a climate change adaptation framework. Officials have suggested that cross-party agreement on a set of objectives and principles and the relative weighting of these, including how such weightings might change over time, could create a strong foundation on which an enduring framework could be designed
 - foundational work that could be prioritised in relation to roles and responsibilities, and climate risk and response information sharing. Officials have suggested that cross-party agreement on the relative priorities for further work would support the transition to a coherent adaptation system over the coming years.
9. The FEC is due to deliver its report on 1 October, pending Business Committee approval of the report-back extension. The FEC's report will contain its findings and recommendation to Parliament, based on submissions, the Departmental Report, and any advice it receives from the independent advisor Dr David Hall. The Committee is also considering meeting with two or three groups to learn from best practice about engaging communities on adaptation. These discussions would also feed into their report.
10. The FEC may take the approach we have outlined above regarding areas where cross-party agreement would be useful, or may choose to focus on particular aspects of those topics or provide more detailed recommendations. Officials are unable to directly influence the content of the FEC's report. We can expect their report to differ from advice provided by officials, but it will

draw on that advice to some extent. If officials are given an indication of what the FEC report may contain, we will provide you with an update on it.

11. The FEC report will be tabled in the House and published on the Parliament website, along with all of the submissions and all written advice the FEC received from officials, Dr Hall and material the Parliamentary Commissioner for the Environment provided before exiting the inquiry.

Process from here

12. In parallel, the Independent Reference Group (IRG) has been providing a sounding board and source of advice from industry, local government, and Māori perspectives to complement the FEC inquiry. As discussed, we are looking to extend the IRG through to 2025 to support the fundamental system design components of the framework, including policy decisions for any legislation.
13. After the FEC report has been delivered, the Government will need to take decisions on policy proposals for the adaptation framework. If the FEC reports-back on 1 October, a viable Cabinet date to aim for is 25 November. This should allow adequate time for Ministerial and cross-party discussions to occur before Cabinet decisions, founded on the FEC report.
14. Cabinet can make a variety of decisions on matters of policy, not all of which have direct legislative implications. Where legislation is proposed, Cabinet decisions need to be detailed and thorough in order to provide Parliamentary Counsel Office with clear drafting instructions.
15. Developing material for Cabinet to take decisions, including any decisions that will require drafting for legislation, will require additional detailed policy advice to turn the IRG advice and FEC report into policy proposals. This will require yourself and other Ministers to make key choices and provide direction to officials.
16. The kind of policy decisions that will be needed from Ministers include:
 - which objectives and principles will underpin the system, and how they should be weighted
 - how the objectives and principles are implemented in practice, for example which decision makers under which legislative frameworks would apply the principles on which decisions
 - which parts of the system the objectives and principles need to influence, as a priority.
17. Decisions on the above would then inform decisions on:
 - content for any new legislation or regulation(s), or amendments to existing legislation or regulation(s)
 - any non-legislative proposals within the adaptation framework, including any new work programmes the Government may wish to undertake and any decisions on allocation of funding or budget in the future
 - the approach to communicating the framework and forward work programme to the public and key stakeholders.

18. Appendix A outlines the steps that follow Cabinet decisions, indicating a likely period of 4 months for drafting legislation (this time period is based on discussions with Parliamentary Counsel and their estimated complexity of the bill). The appendix also notes the final process steps leading to the introduction of a bill. There follows the standard legislative process to enactment of the legislation.
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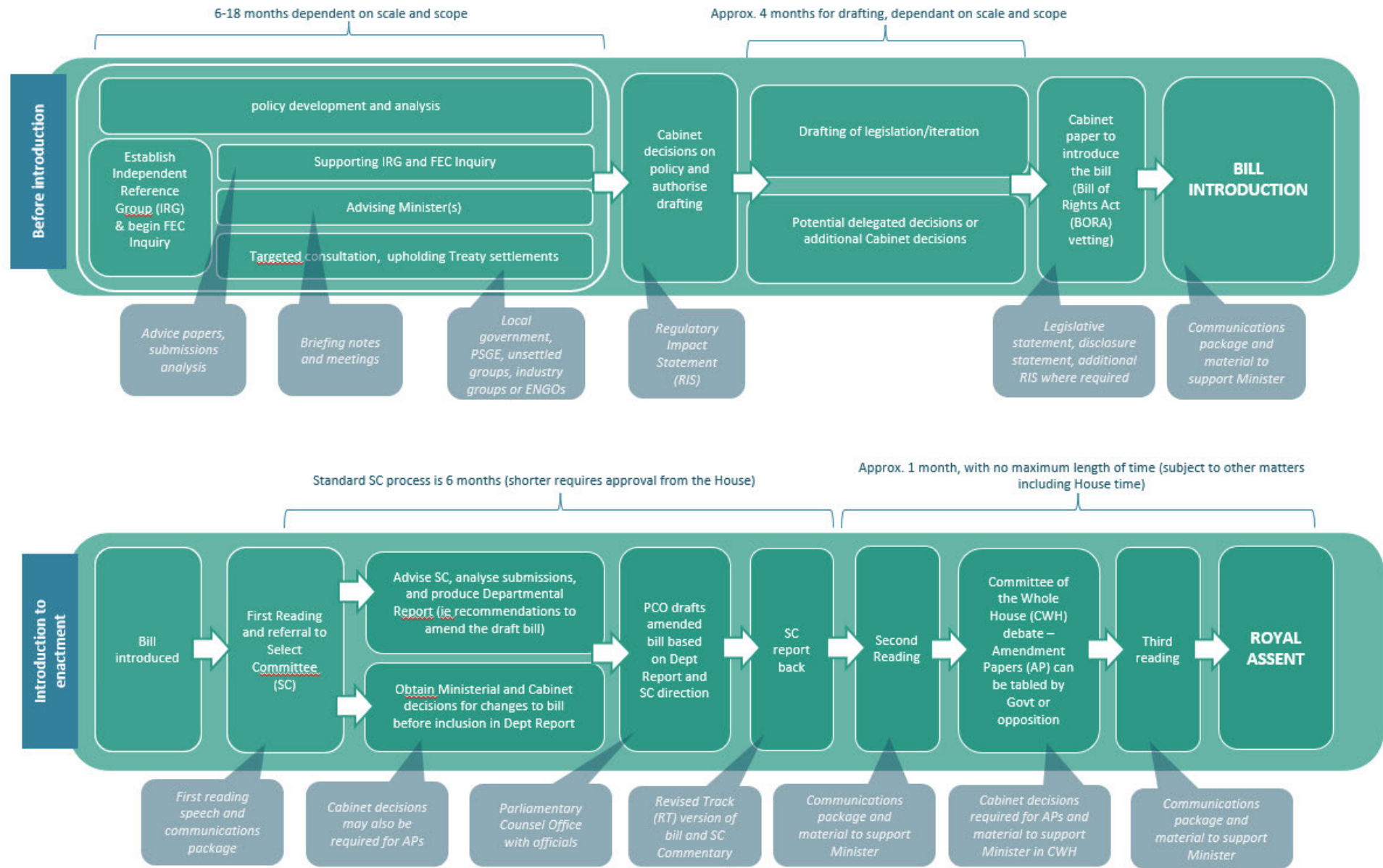
Impact analysis and consultation are required as part of the development of legislation

19. All Cabinet proposals that seek approval of new or amended regulations or legislation must be accompanied by impact analysis, which is summarised in a Regulatory Impact Statement (RIS). To meet RIS requirements when proposing legislation, agencies demonstrate consultation with affected parties on problem definition, the range of feasible options, and impacts of the options.
20. The Ministry for Regulation is imposing tougher standards for RISs than what the Government has experienced during the first six months of this term. The format of consultation that is expected varies according to the potential impact of the proposed legislation. The proposed adaptation framework legislation is expected to have wide-reaching impacts, specifically due to the impacts of a cost-sharing framework on all New Zealanders.
21. There have been multiple rounds of high level consultation to date on the problem definition and broad range of issues and options to be addressed by the adaptation framework, including the FEC inquiry. Although there has not been consultation on specific proposals, this may sufficiently meet the RIA requirements for legislation which primarily contains principles, objectives and enabling provisions for secondary legislation such as regulations, consistent with your direction.
22. We will remain in discussion with the Ministry for Regulation as policy proposals firm up and will keep you informed.

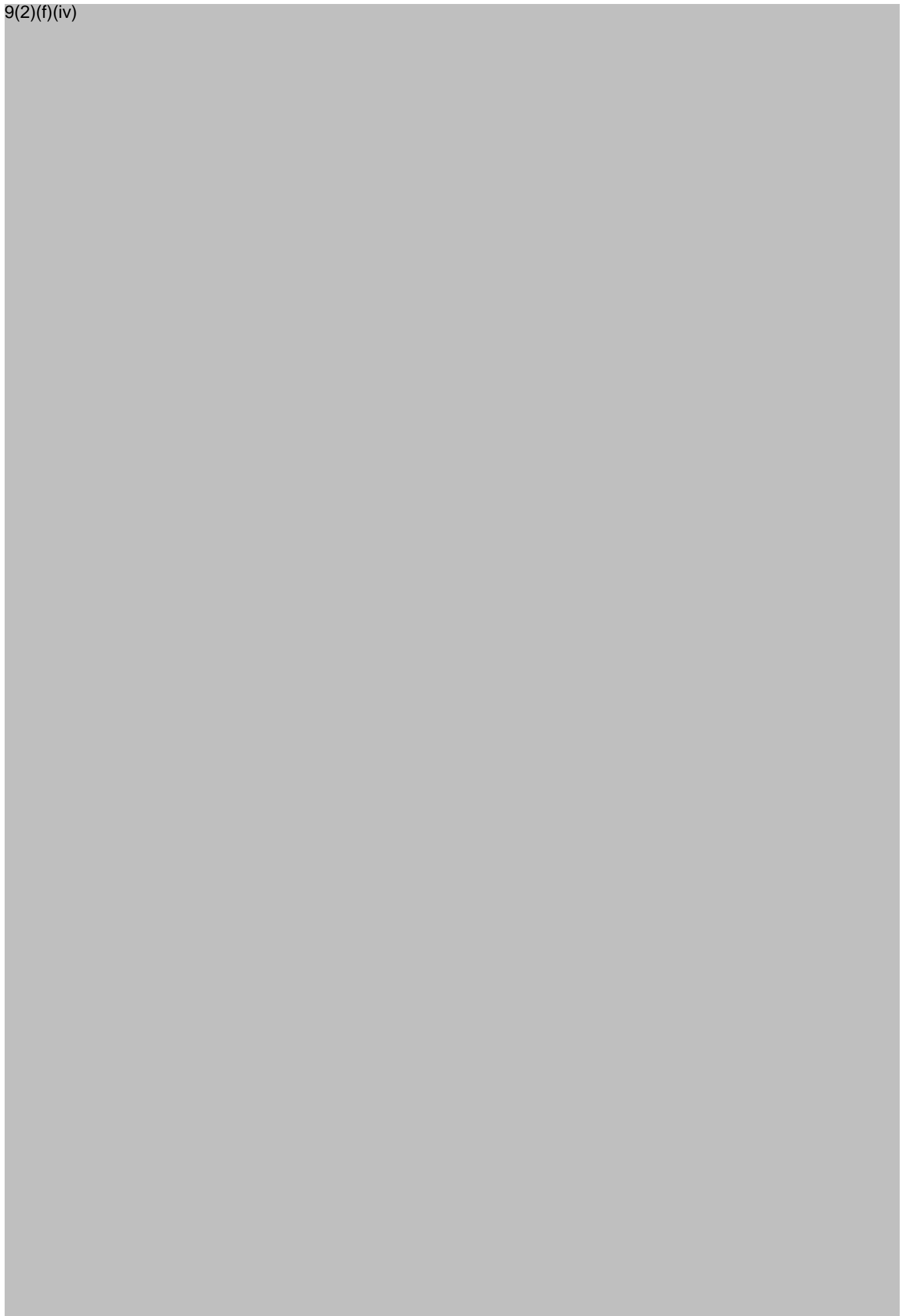
Next steps

23. We have time with you on Monday 12 August and would like to discuss:
- a. your strategy for seeking cross-party agreement to the approach of the framework,
 - b. the core matters on which early direction is needed to guide policy development (Appendix B), and
 - c. your approach to the Cabinet paper for November.
24. We can revise and amend our advice on process based on your direction at that meeting.

Appendix A: Legislative development process



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