

House of Representatives
Supplementary Order Paper

Tuesday, 2 September 2008

Climate Change (Emissions Trading and
Renewable Preference) Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 43: new section 66A

To omit this section (line 30 on page 68 to line 10 on page 69) and substitute the following section:

“66A Interpretation

In this subpart,—

“determination means a determination made by the Minister under **section 75(7)(b)**

“draft determination means a draft determination made by the Minister under **section 75(4)**

“eligible land means pre-1990 forest land other than land that has been declared to be exempt land under **section 159 or 160**

“eligible person means a person who meets any requirements specified in this subpart, and in an allocation plan, for receiving an allocation of New Zealand units free of charge

“existing determination means an existing—

“(a) determination; or

“(b) new determination

“new determination means a determination made by the Minister under **section 75B**

“person includes a person or class of persons or, if the context requires, a person representing a class of persons

“revoked determination means an existing determination that has been revoked.

Clause 43: new section 67

Subsection (1): to omit “give a direction to” (lines 12 and 13 on page 69) and substitute “direct”.

Subsection (2): to omit “issuing” (line 15 on page 69) and substitute “giving”.

Subsection (2)(b)(ii): to omit “the ability of New Zealand to meet its international obligations (if any)” (lines 22 and 23 on page 69) and substitute “New Zealand’s international obligations, including any obligation”.

Subsection (2)(b): to add the following subparagraph (after line 28 on page 69):

“(iv) any other matters that the Minister considers relevant; and

Subsection (2)(c)(ii): to omit “any” (line 36 on page 69) and substitute “the most recent”.

Subsection (2)(c)(ii): to omit “**147**” (line 37 on page 69) and substitute “**147(1)**”.

Subsection (4): to omit this subsection (lines 7 to 14 on page 70) and substitute the following subsections:

“(4) As soon as practicable after giving a direction under **subsection (1)**, the Minister must—

“(a) publish a copy of the direction in the *Gazette*; and

“(b) make a copy of the direction accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and

“(c) present a copy of the direction to the House of Representatives.

“(5) The copies of the direction under **subsection (4)** must be accompanied by a statement setting out how the Minister has had regard to the matters specified in **subsection (2)(b) and (c)**.

Clause 43: new section 67A

Subsection (1): to omit “notifying” (line 17 on page 70) and substitute “containing notification of”.

Subsection (1): to insert after “allocate” (line 18 on page 70) “free of charge”.

Subsection (2): to omit “Notification” (line 27 on page 70) and substitute “The notification contained in the Order in Council made”.

Subsection (2)(c): to omit “or sale and method of sale for New Zealand units” (lines 33 and 34 on page 70) and substitute “or the sale of New Zealand units and the method of sale”.

Subsections (3) to (5): to omit these subsections (line 35 on page 70 to line 6 on page 71) and substitute the following subsections:

“(3) A copy of the report under **section 147(5)** must be presented to the House of Representatives before an Order in Council may be made under this section.

“(4) The Minister must make a copy of any Order in Council made under **subsection (1)** accessible via the Internet site of the

department of the chief executive responsible for the administration of this Act.

- “(5) The Crown is not bound by the notification contained in any Order in Council made under **subsection (1)** to make any decisions in relation to the issuance, sale, or allocation free of charge of New Zealand units.

Clause 43: new section 68

To omit this section (line 5 on page 79 to line 3 on page 82) and substitute the following sections:

“**68 Allocation in respect of pre-1990 forest land**

- “(1) The Minister must exercise his or her powers under this subpart to ensure that an allocation plan that provides for the matters in this section and **section 72(2)** is in force for the period from **1 January 2008 to 31 December 2021**.
- “(2) The matters that an allocation plan must provide for are—
- “(a) an allocation of New Zealand units free of charge to—
- “(i) landowners, or former landowners, of eligible land who are eligible persons; or
- “(ii) a person appointed in accordance with **section 68A** to hold any New Zealand units allocated in respect of the eligible land covered in **paragraph (c)(i)(A)**; and
- “(b) a total number of New Zealand units available for allocation free of charge under the allocation plan consisting of—
- “(i) 21 million New Zealand units in the period from **1 January 2008 to 31 December 2012**, reduced by 1 New Zealand unit for each tonne of emissions that the Minister estimates will result from the activities specified in **subsection (5)** in that period; and
- “(ii) 34 million New Zealand units in the period from **1 January 2013 to 31 December 2021**, reduced by 1 New Zealand unit for each tonne of emissions that the Minister estimates will result from the activities specified in **subsection (5)** in that period; and
- “(c) an allocation of New Zealand units free of charge consisting of—
- “(i) 18 New Zealand units for each hectare of eligible land that was Crown forest licence land on **1 January 2008** and—
- “(A) will not have been transferred to iwi as part of a Treaty of Waitangi settlement by

the date on which the allocation plan is issued; or

“(B) has been, or will have been, transferred to iwi as part of a Treaty of Waitangi settlement either on or after **1 January 2008** but before the date on which the allocation plan is issued:

“(ii) 39 New Zealand units for each hectare of eligible land that was transferred to the landowner, or former landowner, of the land—

“(A) after **31 October 2002**; or

“(B) prior to **1 November 2002** if, since that date, ownership of any body corporate owning the land has changed in the manner and to the extent specified in the allocation plan:

“(iii) for any hectare of eligible land not covered in **subparagraph (i) or (ii)**, the number of New Zealand units calculated in accordance with the following formula:

$$A = (B - C)/D$$

where

A is the number of units for each hectare of eligible land not covered in **subparagraph (i) or (ii)**

B is the total number of New Zealand units available for allocation under **subsection (2)(b)**

C is the total number of New Zealand units to be allocated in accordance with **subparagraph (i) and (ii)**

D is the number of hectares of eligible land not covered in **subparagraph (i) or (ii)**.

“(3) In addition to the matters provided for in **subsection (2)**, an allocation plan—

“(a) must also specify the manner in which, and the extent to which, the ownership of any body corporate owning eligible land must have changed for the purposes of **subsection (2)(c)(ii)(B)**; and

“(b) may specify, for the purposes of **subsection (7)**, a date or event other than the settlement date upon which any or all eligible land is to be treated as transferred for the purposes of this section.

“(4) Despite **subsection (2)(c)**, the allocation plan must treat any Crown forest licence land transferred pursuant to the Te Uri

o Hau Claims Settlement Act 2002 as if it were eligible land covered by **subsection (2)(c)(iii)**.

- “(5) For the purposes of **subsection 2(b)(i) and (ii)**, the activities are—
- “(a) deforestation on exempt land; and
 - “(b) deforestation of 2 hectares or less of pre-1990 forest land for which no obligation to surrender units is imposed under this Act.
- “(6) An allocation plan that provides for the matters in this section may—
- “(a) provide for the New Zealand units referred to in **subsection (2)(b)(ii)** to be allocated at any time; and
 - “(b) specify dates before which some or all of those New Zealand units may not be surrendered or converted by any person.
- “(7) For the purposes of this section, eligible land is to be treated as transferred on the settlement date, unless the allocation plan specifies another date or event upon which any or all eligible land is to be treated as transferred.
- “(8) For the purposes of this section, **Crown forest licence land** means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989.

“**68A Minister to appoint person to hold certain New Zealand units**

- “(1) The Minister must, prior to making a determination in respect of eligible land covered by **section 68(2)(c)(i)(A)**, by notice in the *Gazette*,—
- “(a) appoint a person to—
 - “(i) apply for an allocation of New Zealand units in respect of the land; and
 - “(ii) hold on trust for the future owners of the land any New Zealand units allocated in respect of the land; and
 - “(b) determine—
 - “(i) the structure, composition, and functions of the person; and
 - “(ii) the terms and conditions upon which the person is to hold the New Zealand units.
- “(2) If the Minister has not appointed a person in accordance with **subsection (1)** prior to issuing a notice under **section 75(1)** inviting persons to apply for an allocation of New Zealand units under an allocation plan providing for the matters in **section 68**, then the Minister must, by notice in the *Gazette*, appoint a person to apply for an allocation of New Zealand units

in respect of the land covered by **section 68(2)(c)(i)(A)** on behalf of the person to be appointed under **subsection (1)**.

Clause 43: new section 69

Subsection (1): to omit “and functions” (line 5 on page 82).

Subsection (1): to omit “**subsection (2)**” (line 7 on page 82) and substitute “this section and **section 72(2)**”.

Subsection (1)(c)(i): to omit “**2013**; and” (line 14 on page 82) and substitute “**2013**; or”.

Subsection (2)(a)(i): to omit “trade exposed” (line 21 on page 82) and substitute “trade-exposed”.

Subsection (2)(a)(iii)(A): to omit “carry out” (line 27 on page 82) and substitute “are participants in respect of”.

Subsection (2)(a)(iii)(A): to insert after “**Schedule 3**” (line 28 on page 82) “**or Part 4 of Schedule 4**”.

Subsection (2)(a)(iii)(A): to omit “or has an exemption under **section 60** in respect of the activity” (lines 32 and 33 on page 82).

Subsection (2)(a)(iii)(B): to omit “persons” (line 35 on page 82) and substitute “participants”.

Subsection (2)(a)(iii)(B): to omit “persons” (line 37 on page 82) and substitute “person’s”.

Subsection (2)(a)(iii)(B): to omit “or direct” (line 1 on page 83) and substitute “direct”.

Subsection (2)(a)(iii)(B): to omit “electricity:” (line 4 on page 83) and substitute “electricity; and”.

Subsection (2)(b): to insert after “for allocation” (line 7 on page 83) “free of charge”.

Subsection (2)(b)(ii): to omit this subparagraph (lines 20 to 30 on page 83) and substitute the following subparagraph:

“(ii) a number of New Zealand units that the Minister is satisfied is sufficient to compensate the persons specified in **paragraph (a)** for 90% of the electricity cost increase that the Minister estimates those persons would face, due to the obligation imposed by this Act on participants to surrender units, in the period for which the allocation plan is in force, as if those persons purchased and consumed the same amount of electricity per year in that period as those persons did in **2005**; and

Subsection (2)(c): to omit this paragraph (lines 31 to 37 on page 83) and substitute the following paragraph:

“(c) if the allocation plan is in force in any year from **1 January 2019 to 31 December 2029**, a total number of New Zealand units available for allocation

free of charge under the allocation plan that is equal to eleven-twelfths of N in **2019**, and then declining in each subsequent year at a linear rate to reach a number equal to one-twelfth of N in **2029**, where N equals the total number of New Zealand units available for allocation under **paragraph (b)** in **2018**; and

Subsection (2)(d): to omit “trade exposed, which must include (but are)” (lines 2 and 3 on page 84) and substitute “trade-exposed, including (but”.

To add the following subsections (after line 19 on page 84):

“(3) If, after **31 December 2018**, a person becomes eligible for an allocation of New Zealand units in accordance with an allocation plan providing for the matters in this section, the allocation plan may provide for the matters in **subsection (2)(c)** as if the person had been eligible for an allocation of New Zealand units in accordance with an allocation plan providing for the matters in this section that was in force in **2018**.

“(4) Nothing in **subsection (3)** entitles a person who becomes an eligible person after **31 December 2018** to an allocation of New Zealand units free of charge in any year before the year in which the person becomes an eligible person.

Clause 43: new section 70

Subsection (1): to omit “and perform his or her functions” (lines 21 and 22 on page 84) and substitute “this section and **section 72(2)**”.

Subsection (1): to omit “**subsection (2)**” (line 23 on page 84) and substitute “this section and **section 72(2)**”.

Subsection (1)(c)(i): to omit “**2013**; and” (line 32 on page 84) and substitute “**2013**; or”.

Subsection (2)(a)(i): to omit this subparagraph (lines 1 to 17 on page 85) and substitute the following subparagraph:

- “(i) persons who—
 - “(A) meet any tests or thresholds that are specified in the allocation plan; and
 - “(B) subject to **subsection (3)**, in any year or years specified in the allocation plan, are participants in respect of an activity listed in **Part 5 of Schedule 3 or Part 5 of Schedule 4**, or are not participants in respect of an activity listed in **Part 5 of Schedule 3**, but who farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry for reward or for the purpose of trade in those animals or in animal material or animal products taken or derived from those animals, or who pur-

chase, other than for on-selling, synthetic
fertiliser containing nitrogen; or

Subsection (2)(a)(ii): to omit “**(i)**” (line 19 on page 85) and substitute “**(i)(B)**”.

Subsection (2)(b): to insert after “for allocation” (line 22 on page 85) “free of charge”.

Subsection (2)(c): to omit this paragraph (lines 28 to 34 on page 85) and substitute the following paragraph:

- “(c) if the allocation plan is in force in any year from **1 January 2019 to 31 December 2029**, a total number of New Zealand units available for allocation free of charge under the allocation plan that is equal to eleven-twelfths of N in **2019**, and then declining in each subsequent year at a linear rate to reach a number equal to one-twelfth of N in **2029**, where N equals the number of New Zealand units available for allocation under **paragraph (b)** in **2018**.

To add the following subsection (after line 34 on page 85):

- “(3) Despite **subsection (2)(a)(i)(B)**, an allocation plan may only provide for an allocation of New Zealand units to one or the other, but not both, of the following persons:
- “(a) persons who are participants in respect of an activity listed in **Part 5 of Schedule 3 or Part 5 of Schedule 4**; or
- “(b) persons who are not participants in respect of an activity listed in **Part 5 of Schedule 3**, but who farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry for reward or for the purpose of trade in those animals or in animal material or animal products taken or derived from those animals, or who purchase, other than for on-selling, synthetic fertiliser containing nitrogen.

Clause 43: new section 71(2) and (3)

To omit these subsections (lines 1 to 10 on page 86) and substitute the following subsections:

- “(2) Nothing in this subpart requires—
- “(a) an allocation plan to provide for the allocation free of charge of the total number of New Zealand units available for allocation under the allocation plan; and
- “(b) the Minister, in making a determination, to allocate the total number of New Zealand units available for allocation under an allocation plan unless required to do so by the allocation plan.
- “(3) Despite **section 68(2)(a), 69(2)(a), 69B(2)(a), or 70(2)(a)**, a draft allocation plan, or an allocation plan,—
- “(a) is not required to specify—

- “(i) the identity of persons who are eligible to receive an allocation of New Zealand units; or
- “(ii) the amount of any person’s allocation; and
- “(b) may, in accordance with **section 72(2) or 73(2)(b)**, specify the criteria, methodologies, and other things that the Minister must apply to make a determination specifying—
 - “(i) the identity of each eligible person; and
 - “(ii) the amount of each eligible person’s allocation.

Clause 43: new section 72

Subsection (1): to omit “is” (line 12 on page 86) and substitute “be”.

Subsection (2)(b): to omit this paragraph (lines 16 to 22 on page 86) and substitute the following paragraph:

- “(b) any tests or thresholds that persons must meet to be eligible for an allocation of New Zealand units; and

Subsection (2)(c): to omit “relevant” (line 25 on page 86) and substitute “applicable”.

Subsection (2)(c)(i): to omit “under the allocation plan” (line 27 on page 86).

Subsection (2)(c): to insert the following subparagraph after *subparagraph (i)* (after line 27 on page 86):

- “(ia) the persons who are eligible for an allocation of New Zealand units; and

Subsection (2)(c)(ii): to omit “under the allocation plan” (line 29 on page 86).

Subsection (2)(c)(iii): to omit “allocation of” (line 32 on page 86).

Subsection (2)(d): to insert after “methodologies” (line 35 on page 86) “to be”.

Subsection (2)(d)(i) and (ii): to omit these subparagraphs (lines 1 to 5 on page 87) and substitute the following subparagraphs:

- “(i) where the allocation plan will provide for the matters specified in **sections 69 or 70**, the general principles specified in **section 74**; and
- “(ii) where a review has been completed under **section 147(1)**, any relevant recommendations of the most recently completed review; and

Subsection (2)(e): to omit “supply” (line 7 on page 87) and substitute “supply, and the form in which the person must supply the data and information,”.

Subsection (2): to insert the following paragraph after *paragraph (e)* (after line 14 on page 87):

- “(ea) in relation to an eligible person who receives an allocation of New Zealand units,—
 - “(i) the records, or the kind of records, that the person must retain; and
 - “(ii) the form in which the person must retain the records; and

“(iii) the period for which the person must retain the records; and

Subsection (3)(a): to omit “the” (line 18 on page 87) and substitute “any”.

Subsection (3)(b): to insert after “plan is” (line 19 on page 87) “made available in hard copy at the office of, and is”.

Subsection (3)(b): to omit “department of” (line 20 on page 87) and substitute “department of,”.

Subsection (4)(a): to omit this paragraph (line 25 on page 87) and substitute the following paragraph:

“(a) how a hard copy of the draft allocation plan may be obtained; and

Subsections (5) and (6): to omit these subsections (line 30 on page 87 to 17 on page 88).

Subsection (7): to omit “and” (line 21 on page 88) and substitute “that contains”.

Subsection (7): to omit “all” (line 22 on page 88) and substitute “the”.

Subsections (9): to omit this subsection (lines 26 to 36 on page 88).

Clause 43: new section 74

To omit “preparing” (line 12 on page 90) and substitute “considering”.

To omit “**70 and 71**” (lines 14 and 15 on page 90) and substitute “**69 and 70**”.

Paragraph (b): to omit “free of charge” (line 26 on page 90).

Paragraph (c): to omit “free of charge” (line 33 on page 90).

Paragraph (c): to omit “eligible for an allocation under the allocation plan” (lines 34 and 35 on page 90).

Paragraph (d): to insert after “firms” in each place where it appears (line 36 on page 90 and line 1 on page 91) “or individuals”.

Clause 43: new sections 75 to 75B

To omit these sections (line 10 on page 91 to line 27 on page 94) and substitute the following sections:

“**75 Determinations made in accordance with allocation plan**

“(1) As soon as practicable after an allocation plan is issued and is in force for a period specified in **section 68(1), 69(1), 69B(1), or 70(1)**, the Minister must give public notice inviting any person who may be eligible for an allocation of New Zealand units under the allocation plan to apply for an allocation.

“(2) The Minister must ensure that a notice given under **subsection (1)** specifies—

“(a) that the person must supply to the Minister the data and information, or the kind of data and information, specified in the allocation plan; and

“(b) how the data and information are to be supplied; and

- “(c) the date by which the data and information must be supplied (which must be no earlier than 40 working days after the date on which notice is given); and
 - “(d) that the data and information supplied is subject to the Official Information Act 1982.
- “(3) Despite anything in this subpart, or in any allocation plan,—
- “(a) a person must respond to a notice given under **subsection (1)** in order to receive an allocation of New Zealand units under any applicable allocation plan; and
 - “(b) the Minister is not under any duty to make a determination in favour of any person who fails to respond to the notice within the period specified.
- “(4) Following the expiry of the time specified in a notice given under **subsection (1)** for the supply of data and information, the Minister must apply the criteria and methodologies specified in the allocation plan to make a draft determination specifying—
- “(a) the total number of New Zealand units available for allocation under the allocation plan; and
 - “(b) the identity of each eligible person; and
 - “(c) the total number of New Zealand units allocated under the allocation plan to each eligible person; and
 - “(d) the year or years in which each eligible person will receive the New Zealand units allocated to them.
- “(5) After making a draft determination, the Minister must notify each eligible person specified in the draft determination, and every person who responded to the notice given under **subsection (1)** who is not specified as an eligible person in the draft determination,—
- “(a) of the draft determination; and
 - “(b) if the person is not specified in the draft determination as an eligible person, of the reasons for the person not being specified as an eligible person; and
 - “(c) that the person has an opportunity to identify any errors, mistakes, or miscalculations that have been made in the application of the criteria and methodologies to make the draft determination; and
 - “(d) if the person identifies any errors, mistakes, or miscalculations, that the person may provide the Minister with information concerning what the person considers should be the correct application of the criteria and methodologies; and
 - “(e) of the date by which the person must supply the information (which date must not be earlier than 20 working days after the date on which notice is given).

- “(6) The Minister may consult further with any person the Minister thinks fit either before or after the expiry of the period specified in **subsection (5)(e)** for providing information.
- “(7) Taking into account any information supplied under **subsection (5)**, and any consultation under **subsection (6)**, the Minister must—
- “(a) make a new draft determination under **subsection (4)**;
or
 - “(b) make a determination of the matters specified in **subsection (4)**.
- “(8) As soon as practicable after making a determination under **subsection (7)(b)**, the Minister must—
- “(a) publish the determination in the *Gazette*; and
 - “(b) make the determination accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - “(c) provide for the transfer of New Zealand units to each eligible person in accordance with the determination.
- “(9) A determination continues in force until—
- “(a) the allocation plan in accordance with which the determination is made expires; or
 - “(b) the determination is replaced by a new determination made in accordance with **section 75B**; or
 - “(c) one of the conditions in **paragraph (a) or (b)** is met, even if the allocation plan in accordance with which the determination is made is revoked and replaced with another allocation plan.

“**75A Minister may require further information after determination made**

- “(1) The Minister may, after making a determination, require the following persons to supply the records, data or information, or the kind of records, data and information, specified in the applicable allocation plan, in the form specified,—
- “(a) persons who have been transferred New Zealand units in accordance with the determination; and
 - “(b) persons who have not been transferred New Zealand units in accordance with the determination, but who have applied to the Minister for an allocation of New Zealand units in accordance with an allocation plan; and
 - “(c) persons who have previously been transferred New Zealand units, but who are not eligible to receive a further transfer of New Zealand units, in accordance with the determination.

- “(2) Any requirement for the supply of records, data or information under **subsection (1)** must be made—
- “(a) by notice to the person (which notice must specify that the records, data, or information supplied are subject to the Official Information Act 1982); and
 - “(b) in accordance with any relevant policies, procedures, and provisions specified in the applicable allocation plan.
- “(3) A person who—
- “(a) receives a notice issued under **subsection (2)(a)** must supply the records, data, or information requested within the time frame specified in the notice; and
 - “(b) fails to respond within the specified time frame for supply of records, data, or information under **subsection 2(a)** may—
 - “(i) not receive any further allocation of New Zealand units until the person supplies the information; and
 - “(ii) commit an offence under **section 118(1)(a) or section 120(1)(d)** as if the reference to the chief executive in those sections were to the Minister, and the reference to **section 83** in **section 118(1)(a)** was to this section.

“**75B New determination made in accordance with allocation plan**

- “(1) The Minister may (but is not required to) revoke and replace any existing determination with a new determination at any time if—
- “(a) the allocation plan under which the existing determination was made has been revoked and replaced with a new allocation plan; or
 - “(b) the existing determination has resulted, or will result, in a person receiving an incorrect allocation owing to—
 - “(i) an error in the application of the criteria and methodologies specified in the applicable allocation plan; or
 - “(ii) the person providing altered, false, incomplete, or misleading information in response to a notice given under **section 75(1) or (5)** in relation to the existing determination; or
 - “(c) a person who is specified as an eligible person under the existing determination is no longer an eligible person; or
 - “(d) there has been a change in the circumstances of a person who is specified as an eligible person under the exist-

- ing determination that, if taken into account, would increase or decrease that person's entitlement to an allocation; or
- “(e) a person who is not specified as an eligible person under the existing determination has—
 - “(i) reasonable grounds to believe that he or she is an eligible person; and
 - “(ii) applied to the Minister for an allocation in accordance with the applicable allocation plan.
 - “(2) However, the Minister may only make a new determination in accordance with an allocation plan that provides for the matters in **section 68** if **subsection (1)(a) or (b)** applies.
 - “(3) In making a new determination, the Minister must,—
 - “(a) if the Minister considers that he or she has sufficient information to make the new determination of the matters specified in **section 75(4)**, comply with **subsection (4)**; or
 - “(b) if the Minister considers that he or she does not have sufficient information to make the new determination of the matters specified in **section 75(4)**, follow the process in **section 75**, except that the reference to—
 - “(i) 40 working days in **section 75(2)(c)** must be read as 20 working days; and
 - “(ii) 20 working days in **section 75(5)(e)** must be read as 10 working days.
 - “(4) If **subsection (3)(a)** applies, the Minister must—
 - “(a) give notice of the matters specified in **section 75(5)** to the following persons:
 - “(i) persons specified as eligible persons under the existing determination who would, once the new determination replaces the existing determination, receive greater or fewer New Zealand units than if the new determination did not replace the existing determination; and
 - “(ii) persons not specified as eligible persons under the existing determination whom the new determination specifies as eligible persons; and
 - “(b) comply with **section 75(6) to (8)** as if the notice given under **paragraph (a)** had been given under **section 75(5)**.
 - “(5) If the Minister has provided notice of the matters specified in **section 75(5)** in accordance with **subsection (4)**, the reference to 20 working days in **section 75(5)(e)** must be read as 10 working days.
 - “(6) Any new determination made in accordance with **subsection (3)**—

- “(a) may specify all of the matters specified in **section 75(4)**, and may—
 - “(i) specify the correct allocation of a person whose allocation is specified incorrectly in the existing determination; or
 - “(ii) not specify as an eligible person a person who was specified as an eligible person under the existing determination but is no longer an eligible person; or
 - “(iii) increase or decrease a person’s allocation owing to a change in the person’s circumstances since the existing determination was made; or
 - “(iv) specify as an eligible person a person who was not specified as an eligible person under the existing determination; and
- “(b) applies subject to **section 75C**.
- “(7) Despite anything in this section, the Minister may make a new determination that corrects any minor mistakes or defects in an existing determination without complying with **section 75(1) to (6)**.

“**75C Effect of new determination**

- “(1) If the Minister makes a new determination in accordance with **section 75B**, the new determination has the effect of immediately revoking and replacing the existing determination.
- “(2) A new determination made in accordance with **section 75B** applies from the date it is made, and, subject to **subsections (5) and (6)**, does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with any revoked determination before that date.
- “(3) If a revoked determination incorrectly specified a person’s allocation, a new determination may increase or decrease the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person—
 - “(a) received under the revoked determination; and
 - “(b) would have received if the revoked determination had specified the person’s correct allocation.
- “(4) If the circumstances of a person specified as an eligible person under a revoked determination changed while that determination was in force, and the person received greater or fewer New Zealand units than the person’s entitlement as a result, then a new determination may increase or decrease the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person—

- “(a) received under the revoked determination; and
 - “(b) should have received, given the person’s change in circumstances.
- “(5) If a person specified as an eligible person under a revoked determination is not specified as an eligible person under a new determination, but the person received greater or fewer New Zealand units than they were entitled to under the revoked determination, then,—
- “(a) if the person received too few New Zealand units, the new determination may specify that the person is to receive a further allocation of New Zealand units equal to the difference between the number of New Zealand units the person received under the revoked determination and the number of New Zealand units that the person would have received if the revoked determination had specified the person’s correct allocation; or
 - “(b) if the person received too many New Zealand units, the chief executive may give a notice to the person, under **section 112A(1)**, specifying the number of New Zealand units the person received that the person was not entitled to, and requiring the person to transfer that number of New Zealand units in accordance with **section 112A(2)**.
- “(6) If a new determination shows that a person received more New Zealand units than the person was entitled to receive under a revoked determination, and the person’s incorrect allocation was due to the person providing altered, false, incomplete or misleading information in response to a notice issued under **section 75(2) or 75(5)**, then the chief executive may give a notice to the person under **section 112A(1)** specifying the number of New Zealand units the person received that the person was not entitled to, and requiring the person to repay that number of New Zealand units in accordance with **section 112A(2)**.

Clause 43: new section 76

Subsection (2)(b): to omit this paragraph (lines 11 and 12 on page 95) and substitute the following paragraph:

- “(b) a successor international agreement.

Clause 43: new section 157A

Subsection (1)(a)(i): to omit “of trees” (line 1 on page 172).

Subsection (2)(a): to omit “10 years or 20 years,” (line 16 on page 172) and substitute “10 years, or 20 years”.

Subsection (2)(a): to omit “require” (line 17 on page 172) and substitute “be”.

Subsection (2)(b): to omit “10 years” (line 20 on page 172) and substitute “10 years,”.

Clause 43: new section 158

Subsection (1): to omit “participant” (line 34 on page 172) and substitute “person carrying out the activity”.

Subsection (2): to omit “participant” (line 4 on page 173) and substitute “person carrying out the activity”.

To add the following subsection (after line 4 on page 173):

- “(3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances in **subsection (2)**, a third party, is to be treated as carrying out an activity listed in **Part 1 of Schedule 3**.

Clause 43: new section 158AA

To omit this section (lines 6 to 12 on page 174) and substitute the following section:

“158AA When deforestation to be treated as occurring in respect of pre-1990 forest land

- “(1) Subject to **subsection (3)**, a landowner (or in the circumstances in **section 158(2)**, a third party) converting a hectare of pre-1990 forest land to land that is not forest land, is to be treated as carrying out an activity listed in **Part 1 of Schedule 3** on the date the hectare is cleared as part of the deforestation process.
- “(2) **Subsection (3)** applies to a landowner converting a hectare of pre-1990 forest land that was cleared but not deforested prior to—
- “(a) the forest land being transferred to the landowner; or
 - “(b) control of the forest land reverting to that landowner following the expiry or termination of a forestry right, Crown forestry licence, lease, or other agreement that relates to the land.
- “(3) A landowner to whom this subsection applies is to be treated as carrying out an activity listed in **Part 1 of Schedule 3** on the date of the first action on the hectare of pre-1990 forest land following—
- “(a) the date of transfer of the land that is inconsistent with the hectare remaining forest land; or
 - “(b) the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land that is inconsistent with the hectare remaining forest land.

Clause 43: new section 158A

Subsection (1): to omit “An owner” (line 14 on page 174) and substitute “A landowner”.

Subsection (2)(a): to insert after “other forest land” (line 21 on page 174) “(the **offsetting forest land**)”.

Subsection (2)(a)(i): to omit “land proposed to be offset” (line 22 on page 174) and substitute “proposed offsetting forest land”.

Subsection (2)(a)(ii): to omit “met.” (line 25 on page 174) and substitute “met; and”.

Subsection (3)(a): to omit this paragraph (lines 28 to 32 on page 174) and substitute the following paragraph:

- “(a) if the chief executive approves the offsetting of pre-1990 forest land, subject to complying with any conditions of the approval,—
 - “(i) the pre-1990 forest land ceases to be pre-1990 forest land; and
 - “(ii) the applicant does not become a participant in respect of the deforestation of the pre-1990 forest land; and

Subsection (3)(b)(i): to omit “other land that has been offset for the pre-1990 forest land” (lines 3 and 4 on page 175) and substitute “offsetting forest land”.

Subsection (3)(c): to omit this paragraph (lines 7 to 13 on page 175) and substitute the following paragraph:

- “(c) a person may not register as a participant in respect of an activity listed in **Part 1 of Schedule 4** in respect of post-1989 forest land that is offsetting forest land unless, in accordance with a process prescribed in regulations, units have been surrendered in respect of the deforestation of the pre-1990 forest land that was offset, or surrendered in respect of the offsetting forest land, as the case may be.

Clause 43: new section 159

To insert the following subsection before *subsection (1)* (before line 16 on page 175):

- “(1AA) This section applies to a person who—
 - “(a) is a landowner of an area of pre-1990 forest land at the date of issue of the allocation plan referred to in **section 68**; or
 - “(b) was the landowner of an area of pre-1990 forest land that was converted to land that is not forest land between **1 January 2008** and the date of issue of the allocation plan referred to in **section 68** at the date of the land’s conversion.

Subsection (1): to omit “The landowner of an area of pre-1990 forest land may apply to the chief executive for that” (lines 16 and 17 on page 175) and substitute “A person to whom this section applies may apply to the chief executive for the area of pre-1990 forest”.

Subsection (1)(c): to omit “**69**” (line 26 on page 175) and substitute “**68**”.

Subsection (2)(c): to omit “, including, if applicable, references to the relevant certificates of title” (lines 33 and 34 on page 175).

Subsection (3): to insert after “satisfied that the” (line 7 on page 176) “applicant is a person to whom this section applies, the”.

Subsection (3): to omit “forest land” (lines 7 and 8 on page 176) and substitute “forest land.”.

Subsection (6): to insert after “pre-1990” (line 38 on page 176) “forest”.

Clause 43: new section 160

Subsection (1)(a): to insert after “land is a” (line 8 on page 177) “specified type of”.

Subsection (1)(b): to omit “**69**” (line 11 on page 177) and substitute “**68**”.

Subsection (3): to omit this subsection (lines 20 to 23 on page 177) and substitute the following subsection:

“(3) If a notice has been given under **subsection (1)**, the landowner of pre-1990 forest land on which there is a specified type of tree weed or, in the circumstances referred to in **section 158**, a third party may apply to the chief executive for the land to be declared exempt land.

Subsection (4)(c): to omit “, including, if applicable, references to the relevant certificates of title” (lines 31 and 32 on page 177).

Subsection (4)(d)(ii): to omit this subparagraph (line 35 on page 177) and substitute the following subparagraph:

“(ii) a forest species growing on the land is a specified type of tree weed; and

Subsection (5): to omit this subsection (lines 5 to 13 on page 178) and substitute the following subsection:

“(5) The chief executive must consider every application received under **subsection (4)** against the priorities in the relevant notice given under **subsection (1)** and—

“(a) may declare the land, or any part of the land, to be exempt land, if satisfied that—

“(i) the applicant is eligible to apply for the exemption under **subsection (3)**; and

“(ii) the land is pre-1990 forest land; and

“(iii) the criteria specified in **subsection (1)** are met; and

“(b) must, if the chief executive declares the land to be exempt land, notify the applicant accordingly.

Subsection (6): to omit “harvesting” (line 14 on page 178) and substitute “clearing”.

Subsection (7): to omit “Land” (line 18 on page 178) and substitute “Any land”.

Subsection (8)(a): to omit this paragraph (lines 23 to 25 on page 178) and substitute the following paragraph:

- “(a) the person must be treated as a person who has failed to submit an annual emissions return in respect of an activity listed in **Part 1 of Schedule 3** when required to do so under this Act; and

Clause 43: new section 162

Subsection (2): to omit “must” (line 12 on page 179) and substitute “must,”.

Subsection (2)(a): to omit this paragraph (lines 13 to 23 on page 179) and substitute the following paragraph:

- “(a) for the purposes of **sections 62(b) and 65(2)(b)**, apply any prescribed methodology and calculate and record the emissions from the activity as if the trees cleared from the pre-1990 forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under **section 148**) cleared from the pre-1990 forest land during the previous 9 years; and

Clause 43: new section 165

Subsection (1): to omit “register” (line 5 on page 181) and substitute “be registered”.

Subsection (1)(a)(ii): to insert before “has” (line 14 on page 181) “the person”.

Subsection (1)(a)(ii): to omit “landowner’s registration” (lines 16 and 17 on page 181) and substitute “person registering”.

Subsection (1)(a)(iii): to omit this paragraph (lines 18 to 21 on page 181).

Subsection (2): to omit “register” (line 35 on page 181) and substitute “be registered”.

Subsection (2)(a)(iii): to omit this subparagraph (lines 18 to 20 on page 182) and substitute the following subparagraph:

- “(iii) is accompanied by the prescribed fee (if any) and any other prescribed information; and

Subsection (2)(c): to add after “**subsection (1)**” (line 27 on page 182) “, if applicable”.

To add the following subsection (after line 27 on page 182):

- “(3) To avoid doubt, and subject to **sections 168A and 169**, if there is a person registered as a participant in respect of carrying out an activity listed in **Part 1 of Schedule 4** in respect of any post-1989 forest land, no other person may be registered as a participant in respect of carrying out a different activity listed in **Part 1 of Schedule 4** in respect of that land.

Clause 43: new section 166

Subsection (1)(b): to omit “register” (line 13 on page 184) and substitute “be a participant”.

To insert the following subsection after *subsection (1)* (after line 15 on page 184):

“(1A) The chief executive must, in respect of every person who is a participant in respect of an activity listed in **Part 1 of Schedule 4**, keep a record of the carbon accounting area or areas in respect of which the person is a participant.

Subsection (2): to omit this subsection (lines 16 to 25 on page 184) and substitute the following subsection:

“(2) A person who is a participant in respect of an activity listed in **Part 1 of Schedule 4**—
“(a) may apply to the chief executive to—
“(i) add or remove any carbon accounting area to or from the post-1989 forest land in respect of which the person is recorded as a participant; or
“(ii) remove post-1989 forest land from a carbon accounting area in respect of which the person is recorded as a participant; and
“(b) must notify the chief executive if the person ceases to carry out the activity in respect of a carbon accounting area or any land in a carbon accounting area in respect of which the person is recorded as a participant.

Subsection (3): to insert after “An application” (line 26 on page 184) “or a notice”.

Subsection (3)(a) and (b): to omit these paragraphs (lines 27 to 30 on page 184) and substitute the following paragraph:

“(a) in the prescribed form; and
“(b) accompanied by any prescribed fee and any prescribed information.

Subsection (4): to omit this subsection (line 31 on page 184 to line 2 on page 185) and substitute the following subsection:

“(4) The chief executive may not add a carbon accounting area to the post-1989 forest land in respect of which a person is recorded as a participant, unless satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of that land under **section 165**.

Subsection (5)(a)(ii): to omit “land; and” (line 12 on page 185) and substitute “forest land; or”.

Subsection (5)(b): to omit this paragraph (lines 13 to 30 on page 185) and substitute the following paragraph:

“(b) receives an application to add a carbon accounting area and is satisfied as to the matters specified in **subsection (4)**, the chief executive must—

- “(i) notify,—
 - “(A) if the activity relates to owning post-1989 forest land, any person with a registered forestry right or registered lease in respect of the land in the carbon accounting area; or
 - “(B) if the activity relates to being the holder of a registered forestry right or registered lease, or being a party to a Crown conservation contract in respect of post-1989 forest land, the landowner of the land in the carbon accounting area; and
- “(ii) update the participant’s record to reflect the addition of the carbon accounting area and notify the participant accordingly.

Subsection (6)(a)(i): to omit “**59(2)(b)**” (line 37 on page 185) and substitute “**59(2)(c)**”.

Subsection (6)(a)(i)(A): to omit “registered participant, any person with a” (lines 38 and 39 on page 185) and substitute “participant, the holder of any”.

Subsection (6)(a)(i)(B): to omit this subsubparagraph (lines 3 to 5 on page 186) and substitute the following subsubparagraph:

- “(B) if a holder of a registered forestry right or registered lease, or a party to a Crown conservation contract is the participant, the landowner of the post-1989 forest land; and

Subsection (6)(a)(ii): to omit this subparagraph (lines 6 to 11 on page 186) and substitute the following subparagraph:

- “(ii) remove the person’s name from the register—
 - “(A) 10 working days after the date of the notification under **section 58(3)(c)**; or
 - “(B) as required under **section 59(2)**:

Subsection (6)(b): to omit “under **subsection (2)**” (line 12 on page 186).

Subsection (6)(b): to omit “participant is registered” (lines 14 and 15 on page 186) and substitute “person is recorded as a participant, or a notification that the person has ceased to carry out the activity in respect of a carbon accounting area or part of a carbon accounting area”.

Subsection (6)(b)(i): to omit this subparagraph (lines 16 to 24 on page 186) and substitute the following subparagraph:

- “(i) notify,—
 - “(A) if the landowner is the participant, any holder of a registered forestry right or registered lease in respect of the post-1989 forest land; or

- “(B) if a holder of a registered forestry right or registered lease, or a party to a Crown conservation contract is the participant, the landowner of the post-1989 forest land; and

Subsection (6)(b)(ii): to omit “register under **section 57**” (line 25 on page 186) and substitute “participant’s record”.

Subsection (6)(b)(ii): to insert after “participant” (line 27 on page 186) “accordingly”.

Subsection (7): to omit “register under **subsection**” (line 28 on page 186) and substitute “participant’s record under **subsection (5)(b)(ii) or**”.

Subsection (7): to omit “**(6)(b)(i)**” (line 30 on page 186) and substitute “**(5)(b)(ii) or (6)(b)(ii)**, as the case may be”.

Subsection (8): to omit this subsection (lines 31 to 37 on page 186) and substitute the following subsection:

- “(8) Despite **section 57(7)**, a person who has terminated a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of that land is to be treated as being a participant in respect of the post-1989 forest land from the date the covenant was registered on the land under section 67ZD of the Forests Act 1949.

Clause 43: new section 167

Subsection (1): to omit “registered as a participant in relation to” (lines 2 and 3 on page 187) and substitute “a participant in respect of”.

Subsection (2)(a): to insert after “**65**” (line 17 on page 187) “or an emissions return under **section 106**”.

Subsection (2)(b): to omit “returns” (line 18 on page 187) and substitute “an emissions return”.

Subsection (2)(c): to omit this paragraph (lines 20 and 21 on page 187) and substitute the following paragraph:

- “(c) must submit any emissions return required by **subsection (2B) or section 168A or 169** in respect of that activity.

Subsection (2A)(b): to omit “participant’s carbon accounting areas” (lines 25 and 26 on page 187) and substitute “carbon accounting areas in respect of which the person is recorded as a participant”.

Subsection (2A)(c) and (d): to omit these paragraphs (line 27 on page 187 to line 11 on page 188) and substitute the following paragraphs:

- “(c) for each carbon accounting area covered by the return, is in respect of the period—
 - “(i) commencing on the later of—
 - “(A) the first day of the mandatory emissions return period in which the return is submitted; or

- “(B) the date on which the land in the carbon accounting area became post-1989 forest land; or
- “(C) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area; and
- “(ii) ending on **31 December** in the last year to which it relates.

Subsections (2B), (2C), (3), (4), (4A), and (5): to omit these subsections (line 12 on page 188 to line 34 on page 190) and substitute the following subsections:

- “(2B) A person to whom this section applies must, if registered as a participant on the last day of any mandatory emissions return period, within 3 months of the end of that period, submit an emissions return that—
 - “(a) is in respect of each of the carbon accounting areas in respect of which the person was recorded as a participant on the last day of the mandatory emissions return period; and
 - “(b) for each carbon accounting area covered by the return, is in respect of the period—
 - “(i) commencing on the later of—
 - “(A) the first day of the mandatory emissions return period that has just ended; or
 - “(B) the date on which the land in the carbon accounting area became post-1989 forest land; and
 - “(ii) ending on the last day of the mandatory emissions return period that has just ended.
- “(3) An emissions return submitted under **subsection (2A) or (2B)**—
 - “(a) must, in respect of each carbon accounting area covered by the return,—
 - “(i) contain the information specified in **section 65(2)(a) to (d)**; and
 - “(ii) assess liability to surrender units, taking into account **section 168**; and
 - “(iii) contain any information required by **subsection (3A)**; and
 - “(b) may contain an assessment of the participant’s net liability to surrender or repay units or net entitlement to receive New Zealand units as referred to in **subsection (4)**; and
 - “(c) must comply with **section 65(2)(da) and (e)**; and
 - “(d) must be submitted in accordance with **section 65(3)**.
- “(3A) If a person submits an emissions return under **subsection (2B)** that covers a carbon accounting area in respect of a period

for which a return has already been submitted under **subsection (2A)**, the return submitted under **subsection (2B)** must—

“(a) record the number of units transferred for removals or surrendered for emissions in respect of the carbon accounting area in respect of the return or returns submitted under **subsection (2A)**; and

“(b) contain an assessment of the difference between—

“(i) the net number of units transferred for removals or surrendered for emissions from the carbon accounting area in respect of the return or returns submitted under **subsection (2A)** (which must be determined by subtracting the number of units surrendered for emissions from the carbon accounting area from the number of units transferred in respect of removals from the carbon accounting area); and

“(ii) the net number of units assessed as the participant’s liability to surrender or entitlement to receive in respect of the carbon accounting area under the return submitted under **subsection (2B)**.

“(3B) If the assessment referred to in **subsection (3A)(b)** shows that the person would be—

“(a) entitled to fewer units for removals from the carbon accounting area in respect of the return submitted under **subsection (2B)** than the net units that have been transferred in respect of returns under **subsection (2A)**, the person is liable to repay the number of units transferred in excess of the entitlement in the return under **subsection (2B)**; or

“(b) entitled to receive more units for removals from the carbon accounting area in respect of the return submitted under **subsection (2B)** than the net number of units that have been transferred in respect of returns under **subsection (2A)**, the person is entitled to receive the number of units that is the difference between the entitlement in respect of the return under **subsection (2B)** and the net number of units already transferred in respect of returns under **subsection (2A)**; or

“(c) liable to surrender more units for emissions from the carbon accounting area in respect of the return submitted under **subsection (2B)** than the net number of units already surrendered in respect of returns under **subsection (2A)**, the person is liable to surrender the number of units that is the difference between the net number

- surrendered and the number assessed as being required to be surrendered under the return under **subsection (2B)**; or
- “(d) liable to surrender fewer units for emissions from the carbon accounting area in respect of the return submitted under **subsection (2B)** than the net number of units already surrendered in respect of returns under **subsection (2A)**, the chief executive must arrange for reimbursement to the person, in accordance with **section 112**, of the number of units that is the difference between the net number surrendered and the number assessed as being required to be surrendered under the return under **subsection (2B)**.
- “(4) A person who submits an emissions return under this section—
- “(a) may include in the return an assessment of the person’s net liability to surrender or repay units, or the person’s net entitlement to New Zealand units, calculated by determining the difference between the total number of units required to be surrendered for emissions from each of the carbon accounting areas covered by the return (or, if relevant, required to be repaid in respect of the carbon accounting areas covered by the return) and the total number of New Zealand units to which the person is entitled in respect of removals from each of the carbon accounting areas covered by the return (or, if relevant, is entitled to be reimbursed in respect of carbon accounting areas covered by the return); and
- “(b) may elect to surrender or repay the net number of units for which the person is liable, or to receive the net number of New Zealand units to which the person is entitled, as determined under **paragraph (a)**; and
- “(c) must, if the person makes an election under **paragraph (b)**, indicate clearly in the return that such an election has been made; and
- “(d) must, if an assessment in the emissions return shows a liability or a net liability to—
- “(i) surrender units, surrender those units within 20 working days of submitting the emissions return; or
- “(ii) repay units, repay those units, by transferring the number of units required to be transferred, within 60 working days of submitting the emissions return, to a Crown holding account designated by the chief executive, and the provisions of **sec-**

tions 121 and 122 apply, with any necessary modifications, as if—

“(A) the units the person is required to repay were units transferred to the person in error; and

“(B) the requirement to repay the units arose under **section 112A**.

“(5) In this section,—

“**mandatory emissions return period** means any of the following periods:

“(a) the first commitment period:

“(b) any subsequent commitment period or, if there is no subsequent commitment period,—

“(i) the 5-year period commencing on **1 January 2013**:

“(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**

“**units surrendered**, in relation to an emissions return under **subsection (2A)**, include units that a person would have been required to surrender in respect of emissions covered by the return, but which were not actually surrendered because of an election under **subsection (4)**

“**units transferred for removals**, in relation to an emissions return under **subsection (2A)**, include units that a person would have been entitled to receive for removals in respect of the return, but which were not actually transferred because of an election under **subsection (4)**.

Clause 43: new section 168

Subsection (1): to omit “registered as a participant in relation to” (lines 23 and 24 on page 191) and substitute “a participant in respect of”.

Subsection (1): to omit “**4**,” (line 25 on page 191) and substitute “**4**”.

Subsection (1): to omit “that land” (line 27 on page 191) and substitute “that land.”.

Subsection (1): to insert after “surrendered” (line 28 on page 191) “for emissions from the land, calculated in accordance with **subsection (2)**”.

Subsections (2), (2A), (2B), (3), and (4): to omit these subsections (line 29 on page 191 to line 27 on page 193) and substitute the following subsections:

“(2) To determine the maximum number of units required to be surrendered in respect of a carbon accounting area in respect of any emissions return (or, where relevant, in respect of an emissions return under **section 168A or 169**, in respect of part of a carbon accounting area), a person must—

“(a) determine the net number of New Zealand units transferred for removals from the carbon accounting area in

- respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in **Part 1 of Schedule 4** in respect of the land (that is, the number of units transferred for removals less any units repaid under **section 111(6) or 167(4)**); and
- “(b) determine the net number of units surrendered in respect of emissions from the carbon accounting area in respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in **Part 1 of Schedule 4** in respect of the land (that is, the number of units surrendered, less any units reimbursed under **section 112 or 167(3B)**); and
- “(c) if the area is—
- “(i) a whole carbon accounting area, subtract the number of units referred to in **paragraph (b)** from the number of units referred to in **paragraph (a)**; or
- “(ii) part of a carbon accounting area,—
- “(A) take the number of units determined by subtracting the number of units referred to in **paragraph (b)** from the number of units referred to in **paragraph (a)**; and
- “(B) divide that number by the number of hectares in the carbon accounting area; and
- “(C) multiply that number by the number of hectares in the part of the carbon accounting area in respect of which the return is submitted.
- “(3) For the purposes of this section,—
- “(a) any units issued in respect of the post-1989 forest land while it was the subject of a forest sink covenant under the Forests Act 1949 must be treated as New Zealand units transferred under this Act in respect of removals from the post-1989 forest land; and
- “(b) units transferred for removals, surrendered, repaid, or reimbursed in respect of a carbon accounting area include units that a person would have been entitled to receive, or would have been required to surrender or repay, in respect of a carbon accounting area but which were not actually transferred, surrendered, repaid, or reimbursed because of an election under **section 167(4)**.

Clause 43: new section 169

To omit this section (line 18 on page 195 to line 16 on page 198) and substitute the following sections:

“168A Ceasing to be registered as participant in respect of post-1989 forest land

- “(1) Subject to **section 168B**, a person who is or was a participant in respect of an activity listed in **Part 1 of Schedule 4** must submit an emissions return to the chief executive within 20 working days of—
- “(a) being removed from the register in respect of that activity; or
 - “(b) ceasing to be a participant in respect of all or part of any carbon accounting area in respect of which the person is recorded as carrying out the activity under **section 166**; or
 - “(c) removing land from a carbon accounting area or removing a carbon accounting area from the land in respect of which the person is recorded as a participant under **section 166**.
- “(2) The emissions return must—
- “(a) set out the carbon accounting area or areas to which the emissions return relates (that, if the person has been removed from the register in respect of an activity listed in **Part 1 of Schedule 4**, must include all carbon accounting areas in respect of which the person was, immediately prior to being removed from the register, recorded as a participant); and
 - “(b) if the return is submitted because the person is ceasing to carry out the activity in respect of part of a carbon accounting area or is removing land from a carbon accounting area under **section 166**, identify the part of the carbon accounting area in respect of which the person is ceasing to carry out the activity or which the person is removing from the carbon accounting area; and
 - “(c) state the maximum number of units that could be required to be surrendered in respect of each carbon accounting area, or part of a carbon accounting area, covered by the return calculated in accordance with **section 168(2)**; and
 - “(d) be accompanied by any prescribed fee and other prescribed information; and
 - “(e) be signed by the participant or former participant.
- “(3) A person required to submit an emissions return in accordance with this section must, by the same date by which a return is required to be submitted under **subsection (1)**, surrender the total number of units that could be required to be surrendered for the post-1989 forest land covered by the return (calculated by adding together the figures for each carbon accounting area referred to in **subsection (2)(c)** together).

“(4) An emissions return under this section must be submitted in the prescribed manner and format.

“**168B Transfer of registration as participant in respect of post-1989 forest land**

“(1) Despite anything in this Act,—

“(a) if any post-1989 forest land, registered forestry right, registered lease, or Crown conservation contract in respect of which a person is a participant in respect of an activity listed in **Part 1 of Schedule 4** is transferred, including by way of sale, assignment, or transmission,—

“(i) the person from whom it is transferred (the **transferor**) ceases, from the date of transfer, to be the participant under this Act; and

“(ii) the person to whom the forest land, registered forestry right, registered lease, or Crown conservation contract is transferred (the **transferee**) is, from the date of transfer, the participant in respect of the activity relating to that post-1989 forest land; or

“(b) if a forestry right or lease is registered, or a Crown conservation contract is entered into, in respect of post-1989 forest land in respect of which the landowner is registered as a participant in respect of owning that land,—

“(i) the landowner ceases, from the date of registration of the forestry right or lease, or the date of entry into the Crown conservation contract, as applicable, to be the participant under this Act; and

“(ii) the holder of the registered forestry right or registered lease, or the other party to the Crown conservation contract, as applicable (the **new participant**), is, from the date of registration of the forestry right or lease or the date of entry into the contract, the participant in respect of the relevant activity listed in **Part 1 of Schedule 4** in respect of the post-1989 forest land.

“(2) If **subsection (1)(a) or (b)** applies,—

“(a) in the case of a transferor and transferee, the transferor and transferee must, within 10 working days of the date of transfer of the land, registered forestry right, or registered lease, or the Crown conservation contract (or, in the case of transmission, as soon as practicable), notify the chief executive of the transfer; and

- “(b) in the case of a landowner and a new participant, the landowner and new participant must, within 10 working days of the date of registration of the forestry right or lease, or the date of entry into the Crown conservation contract, notify the chief executive of the registration of the forestry right or lease, or the entry into the contract; and
 - “(c) the transferor or landowner (as the case may be) is not required to comply with **section 168A**.
- “(3) A notice under **subsection (2)** must be—
- “(a) in the prescribed form; and
 - “(b) accompanied by any prescribed fee and any prescribed information; and
 - “(c) signed by both the transferor and the transferee, or the landowner and the new participant (as the case may require).
- “(4) Following receipt of a notice complying with **subsection (3)**, the chief executive must,—
- “(a) if the transferee or new participant is—
 - “(i) not already registered under **section 57**, enter the transferee’s or new participant’s name on the register kept under **section 57** as a participant in respect of the relevant activity listed in **Part 1 of Schedule 4**; or
 - “(ii) already registered under **section 57**, amend that registration, if necessary, to show that the transferee or new participant is now a participant in respect of the relevant activity listed in **Part 1 of Schedule 4**; or
 - “(b) if the transferor or landowner is registered under **section 57** only in respect of carrying out the activity in respect of the post-1989 forest land, registered forestry right or registered lease, or Crown conservation contract that has been transferred or in respect of which a forestry right or lease has been registered, or a Crown conservation contract has been entered into, remove the transferor’s or landowner’s name from the register in respect of the relevant activity listed in **Part 1 of Schedule 4**; or
 - “(c) if the transferor, landowner, transferee, or new participant is registered under **section 57** as a participant other than in respect of the post-1989 forest land, registered forestry right or registered lease, or Crown conservation contract that has been transferred or in respect of which a forestry right or lease has been registered, or a Crown conservation contract has been entered into, up-

- date the chief executive's records to reflect the changes to the post-1989 forest land in respect of which the person is recorded as a participant; or
- “(d) as applicable, give notice to the transferor and transferee, or landowner and new participant, that the chief executive has taken the action in **paragraph (a), (b), or (c)**.
- “(5) To avoid doubt, for the purposes of **section 54(3)**, a transferor or landowner—
- “(a) continues to be liable in respect of any obligations that arose while the transferor or landowner was a participant (for example, in respect of the filing of returns and surrendering of units required under **section 167**); and
- “(b) is entitled to be transferred New Zealand units in respect of removals covered by any emissions return submitted prior to the relevant transfer or registration of a forestry right or lease, or entry into of a Crown conservation contract; and
- “(c) is not required to notify the chief executive separately under **section 59** if the result of the transfer is that the transferor is ceasing to carry out the activity.
- “**169 Transfer of registration on expiry or termination of registered forestry right, registered lease, or Crown conservation contract in relation to post-1989 forest land**
- “(1) Despite anything in this Act, if a registered forestry right, registered lease, or Crown conservation contract in respect of which a person is a participant in respect of an activity listed in **Part 1 of Schedule 4** expires or is terminated,—
- “(a) the person (the **former participant**) ceases, from the date of expiry or termination, to be the participant; and
- “(b) the landowner of the post-1989 forest land covered by the registered forestry right, registered lease, or Crown conservation contract is, from the date of expiry or termination, the participant in respect of that post-1989 forest land; and
- “(c) the former participant and landowner must jointly notify the chief executive within 10 working days of the transfer or expiry or termination; and
- “(d) the former participant is not required to comply with **section 168A**, but must instead, within 20 working days, submit an emissions return that complies with **subsection (4)**.
- “(2) A notice under **subsection (1)** must be—
- “(a) in the prescribed form; and

- “(b) accompanied by any prescribed fee and any prescribed information; and
 - “(c) signed by both the former participant and the landowner.
- “(3) Following receipt of a notice complying with **subsection (2)**, the chief executive must,—
- “(a) if the landowner is—
 - “(i) not already registered under **section 57**, enter the landowner’s name on the register kept under **section 57** as a participant in respect of the relevant activity listed in **Part 1 of Schedule 4**; or
 - “(ii) already registered under **section 57**, amend that registration, if necessary, to show that the landowner is now a participant in respect of the relevant activity listed in **Part 1 of Schedule 4**:
 - “(b) if the former participant is registered under **section 57** only in respect of carrying out the activity in respect of the forestry right or lease, or a Crown conservation contract that has expired or has been terminated, remove the former participant’s name from the register in respect of the relevant activity listed in **Part 1 of Schedule 4**:
 - “(c) if the former participant or landowner is registered under **section 57** in respect of carrying out the activity other than in respect of the registered forestry right or registered lease, or a Crown conservation contract that has expired or has been terminated, update the chief executive’s records to reflect the changes to the post-1989 forest land in respect of which the person is recorded as a participant:
 - “(d) give notice to the former participant and landowner of the matters specified in **paragraphs (a) to (c)** (if applicable).
- “(4) An emissions return under this subsection must—
- “(a) set out the carbon accounting area or areas to which the emissions return relates; and
 - “(b) if the return is submitted because a registered forestry right, registered lease, or a Crown conservation contract that covers part only of a carbon accounting area has expired or been terminated, identify the part of the carbon accounting area in respect of which the registered forestry right, registered lease, or Crown conservation contract has expired or been terminated; and
 - “(c) record the emissions and removals from each of the carbon accounting areas, or part of a carbon accounting area, covered by the expired or terminated registered forestry right, registered lease, or Crown conser-

- vation contract, calculated in accordance with regulations made under this Act; and
- “(d) in respect of each carbon accounting area or part of a carbon accounting area covered by the return be for the period—
- “(i) commencing on the later of—
- “(A) the first day of the mandatory emissions return period (as defined in **section 167(5)**) in which the registered forestry right, registered lease, or Crown conservation contract expired or was terminated; or
- “(B) the date on which the land in the carbon accounting area, or part of a carbon accounting area became post-1989 forest land; and
- “(ii) ending on the date of expiry or termination of the registered forestry right, registered lease over the land, or Crown conservation contract; and
- “(e) comply with **section 167(3) and (3A)**, as if the references in those provisions to **subsection (2B)** were references to this section.
- “(5) **Section 167(3B)** applies to a former participant who submits a return under this section as if the references in that provision to **subsection (2B)** were references to this section.
- “(6) **Section 167(4)** applies to a former participant who submits a return under this section as if the references in that provision to “this section” was a reference to this section.

“169A Information about status of forest land

- “(1) Despite anything in this Act, the chief executive must, on receipt of a written request for information about the carbon accounting area or areas to which it relates, provide a statement containing the information in **subsection (2)** to—
- “(a) the landowner of any post-1989 forest land in respect of which the holder of a registered forestry right or registered lease or party to a Crown conservation contract is a participant; or
- “(b) a prospective transferee, holder of a registered forestry right or registered lease, or party to a Crown conservation contract who has the written consent of the participant in respect of any post-1989 forest land.
- “(2) A statement under **subsection (1)** must set out—
- “(a) the emissions returns (if any) that have been submitted in respect of the carbon accounting area or areas

- covered by the information request, and the period covered by those returns; and
- “(b) the net number of New Zealand units (if any) that have been transferred for removals in respect of each carbon accounting area covered by the information request (determined by subtracting the number of units repaid under **section 111(6) or 167(3B)**, if any, from the number of units transferred for removals); and
- “(c) the net number of units (if any) that have been surrendered in respect of each carbon accounting area covered by the information request (determined by subtracting the number of units reimbursed under **section 112 or 167(3B)**, if any, from the number of units surrendered).
- “(3) In this section, units transferred for removals, surrendered, repaid, or reimbursed in relation to a carbon accounting area include units that a person would have been entitled to receive or been required to surrender or repay in respect of the carbon accounting area, but that were not actually transferred, surrendered, repaid, or reimbursed because of an election under **section 167(4)**.

Clause 43: new section 170

Subsection (1): to omit “**148**” (line 3 on page 199) and substitute “**148E**”.

Subsection (3): to omit “**148**” (line 24 on page 199) and substitute “**148E**”.

Clause 43: new section 171(6)

To insert after “register” (line 15 on page 200) “as a participant”.

Explanatory note

This Supplementary Order Paper amends the Climate Change (Emissions Trading and Renewable Preference) Bill.
