**Reprint**
**as at 1 January 2019**

# Climate Change Response Act 2002

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| Public Act | 2002 No 40 |
| Date of assent | 18 November 2002 |
| Commencement | see section 2 |

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry for the Environment.**

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Activities with respect to which persons may be participants

### 1 Title

This Act is the Climate Change Response Act 2002.

## Part 1
## Preliminary provisions

### 2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2: section 1, Part 1, subpart 3 of Part 2, and Part 3 (other than section 50(1)(a) and (c)–(h) and section 51) brought into force, on 1 August 2003, by clause 2 of the Climate Change Response Act Commencement Order 2003 (SR 2003/151).

Section 2: subparts 1 and 2 of Part 2 and sections 50(1)(a) and (c)–(h) and 51 brought into force, on 19 November 2007, by clause 2 of the Climate Change Response Act Commencement Order 2007 (SR 2007/336).

### 2A Application of Schedules 3 and 4

(1) Any provision in this Act that imposes an obligation on, or provides an entitlement to, a person in respect of an activity listed in Schedule 3 or 4—

(a) does not apply to that person unless—

(i) the Part or subpart in Schedule 3 or 4 in which the activity is listed applies; and

(ii) the person, if carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3, falls within a class of persons prescribed in an Order in Council that applies that subpart; and

(b) applies subject to sections 2C(3), 217 to 221, 178A, and 178B.

(2) Part 1 of Schedule 3 and Part 1 of Schedule 4 apply on and after 1 January 2008.

(2A) Part 3 of Schedule 4 applies on and after 1 July 2013.

(3) Subpart 1 of Part 2 of Schedule 3 and Part 4 of Schedule 4 apply on and after 1 January 2009.

(4) Part 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3, and subpart 1 of Part 2 of Schedule 4 apply on and after 1 January 2010.

(5) Subpart 1 of Part 5 of Schedule 3 applies on and after 1 January 2011.

(6) Subpart 3 of Part 5 of Schedule 3 applies on and after 1 January 2011.

(7) Subpart 2 of Part 4 of Schedule 3, Part 6 of Schedule 3, and subpart 3 of Part 2 of Schedule 4 apply on and after 1 January 2011.

(7A) Part 1A of Schedule 3 applies on and after 1 January 2013.

(7B) Subpart 2 of Part 3 of Schedule 3 applies on and after 1 January 2014.

(8) Subpart 2 of Part 5 of Schedule 3 applies on and after a date appointed by the Governor-General by Order in Council.

(9) Subpart 4 of Part 5 of Schedule 3 applies on and after a date appointed by the Governor-General by Order in Council.

(10) *[Repealed]*

(11) *[Repealed]*

(12) *[Repealed]*

(13) *[Repealed]*

(14) Subpart 2 of Part 2 of Schedule 4 applies on and after a date to be appointed by the Governor-General by Order in Council.

(15) *[Repealed]*

(16) *[Repealed]*

(17) *[Repealed]*

(18) *[Repealed]*

(19) *[Repealed]*

Section 2A: inserted, on 26 September 2008, by section 4 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 2A(1): substituted, on 8 December 2009, by section 4(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(1)(b): amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

Section 2A(1)(b): amended, on 1 January 2013, by section 4(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(2): amended, on 1 July 2013, by section 4(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(2A): inserted, on 1 July 2013, by section 4(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(3): amended, on 1 January 2013, by section 4(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(5): amended, on 8 December 2009, by section 4(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(6): amended, on 8 December 2009, by section 4(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(7A): inserted, on 1 January 2013, by section 4(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(7B): inserted, on 1 January 2013, by section 4(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(8): amended, on 8 December 2009, by section 4(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(9): amended, on 8 December 2009, by section 4(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(10): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(11): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(12): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(13): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(15): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(16): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(17): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(18): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(19): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 2B Orders in Council in relation to Part 5 of Schedule 3

(1) An Order in Council made under section 2A(8) or (9) appointing a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 applies must—

(a) be made on the recommendation of the Minister responsible for the administration of this Act; and

(b) appoint a date that is 1 January in a year; and

(c) be made at least 1 year before the date appointed in the Order in Council; and

(d) not appoint a date earlier than 1 January 2013.

(2) One or more Orders in Council made under section 2A(8) or (9) may provide that subpart 2 or 4 of Part 5 of Schedule 3 applies—

(a) specifically to 1 or more classes of persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order; or

(b) generally to all persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order.

(3) Before recommending that an Order in Council be made under section 2A(8) or (9), the Minister must have regard to—

(a) the need for the EPA to be able to verify information contained in emissions returns of the persons who will become participants in respect of

an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and

(b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 will reduce their emissions; and

(c) the desirability of minimising—

(i) the compliance and administration costs of persons who will become participants in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and

(ii) the administration costs of the Crown in administering the greenhouse gas emissions trading scheme established under this Act.

(4) Before recommending the making of an Order in Council under section 2A(8) or (9), the Minister must consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the order.

Section 2B: inserted, on 8 December 2009, by section 5 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2B(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 2C Effect of Orders in Council in relation to Part 5 of Schedule 3

(1) This section applies if an Order in Council made under section 2A(8) or (9) has the effect that subparts 1 and 2 of Part 5 of Schedule 3, or subparts 3 and 4 of Part 5 of Schedule 3, apply at the same time.

(2) If this section applies, then regulations made under section 163(1) may require—

(a) a person carrying out an activity listed in subpart 1 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 to—

(i) collect data or other information relating to the same synthetic fertiliser; and

(ii) calculate emissions in respect of emissions relating to the same synthetic fertiliser; or

(b) a person carrying out an activity listed in subpart 3 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 to—

(i) collect data or other information relating to the same ruminant animals, pigs, horses, or poultry; and

(ii) calculate emissions relating to the same ruminant animals, pigs, horses, or poultry.

(3) However,—

(a) on and after the date from which the person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the activity listed in subpart 1 of Part 5 of Schedule 3 in relation to the fertiliser; and

(b) on and after the date from which the person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 is required to surrender units for emissions relating to the ruminant animals, pigs, horses, or poultry, this Act no longer applies to the person carrying out the activity listed in subpart 3 of Part 5 of Schedule 3 in relation to those ruminant animals, pigs, horses, or poultry.

(4) If an Order in Council is made under—

(a) section 2A(8) that has the effect of applying subpart 2 of Part 5 of Schedule 3 to all persons who carry out an activity listed in that subpart from a date appointed in that order, then section 2A(5) and subpart 1 of Part 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity:

(b) section 2A(9) that has the effect of applying subpart 4 of Part 5 of Schedule 3 to all persons who carry out an activity listed in that subpart from a date appointed in that order, then section 2A(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity.

(5) If, by operation of subsection (3)(a) or (b) or (4)(a) or (b), this Act no longer applies to a person carrying out an activity in subpart 1 or 3 of Part 5 of Schedule 3, or an activity listed in subpart 1 or 3 of Part 5 of Schedule 3 is repealed, then—

(a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of the provision, to be a participant in respect of that activity; and

(b) the person is not required to comply with section 59, but the EPA may, for the purposes of section 59(2), determine that the person has ceased to carry out the activity.

Section 2C: inserted, on 8 December 2009, by section 5 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2C(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 3 Purpose

(1) The purpose of this Act is to—

(a) enable New Zealand to meet its international obligations under the Convention and the Protocol, including (but not limited to)—

(i) its obligation under Article 3.1 of the Protocol to retire Kyoto units equal to the number of tonnes of carbon dioxide equivalent of human-induced greenhouse gases emitted from the sources listed in Annex A of the Protocol in New Zealand in the first commitment period; and

(ii) its obligation to report to the Conference of the Parties via the Secretariat under Article 7 of the Protocol and Article 12 of the Convention:

(b) provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce the emission of greenhouse gases by—

(i) assisting New Zealand to meet its international obligations under the Convention and the Protocol; and

(ii) reducing New Zealand's net emissions of those gases to below business-as-usual levels; and

(c) provide for the imposition, operation, and administration of a levy on specified synthetic greenhouse gases contained in motor vehicles and also another levy on other goods to support and encourage global efforts to reduce the emission of those gases by—

(i) assisting New Zealand to meet its international obligations under the Convention and the Protocol; and

(ii) reducing New Zealand's net emissions of those gases to below business-as-usual levels.

(2) *[Repealed]*

(2) A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of this Act.

(3) For the purposes of this section, **business-as-usual levels** means the levels of New Zealand's greenhouse gas emissions, estimated by the Minister or the EPA at any particular point in time, as if the greenhouse gas emissions trading scheme provided for under this Act had not been implemented.

Section 3(1): substituted, on 26 September 2008, by section 5 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 3(1)(b): replaced, on 1 January 2013, by section 5 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3(1)(c): inserted, on 1 January 2013, by section 5 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3 first subsection (2): repealed, on 8 December 2009, by section 6(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 3(3): added, on 8 December 2009, by section 6(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 3(3): amended, on 5 December 2011, pursuant to section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 3A Treaty of Waitangi (Te Tiriti o Waitangi)

In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi,—

(a) with respect to section 2B (which relates to Orders in Council in relation to Part 5 of Schedule 3), before recommending the making of an Order in Council under section 2A(8) or (9), the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the order:

(b) with respect to section 75 (which relates to consultation on a pre-1990 forest land allocation plan), before making a recommendation under section 72, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the pre-1990 forest land allocation plan:

(c) with respect to section 76 (which relates to consultation on a fishing allocation plan), before making a recommendation under section 74, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the fishing allocation plan:

(d) with respect to section 161 (which relates to the appointment and conduct of a review panel),—

  (i) if the Minister initiates a review under section 160(1) or 269(1) and appoints an independent panel under section 160(3) or 269(3), the Minister must ensure that the review panel has at least 1 member who, in the Minister's opinion, has the appropriate knowledge, skill, and experience relating to the principles of the Treaty of Waitangi and tikanga Māori to conduct the review; and

  (ii) the review panel must consult with the representatives of iwi and Māori that appear to the panel likely to have an interest in the review; and

  (iii) the terms of reference for the review panel must incorporate reference to the principles of the Treaty of Waitangi:

(e) with respect to section 161G (which relates to regulation-making powers in relation to eligible agricultural activities), before recommending the making of a regulation under section 161G(1), the Minister must consult, or be satisfied that the chief executive has consulted, representatives of

iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation:

(f) with respect to section 162 (which relates to regulations adding further activity to Part 2 of Schedule 4), before recommending the making of a regulation under section 162(1), the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation:

(g) with respect to section 163 (which relates to regulations relating to methodologies and verifiers), before recommending the making of a regulation under section 163(1), the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation:

(h) with respect to section 164 (which relates to regulations relating to unique emissions factors), before recommending the making of a regulation under section 164, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation:

(i) with respect to section 224 (which relates to the gazetting of targets), before the Minister may set, amend, or revoke a target, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the target:

(j) with respect to section 225 (which relates to regulations relating to targets), before recommending the making of a regulation under section 225(1), the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation.

Section 3A: inserted, on 8 December 2009, by section 7 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 3A(d)(i): amended, on 1 January 2013, by section 6 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3A(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

**account number** means a unique account number assigned to a holding account by the Registrar under section 15(1)(a)

**agency** means,—

(a) in relation to the motor vehicle levy, the Registrar of Motor Vehicles; and

(b) in relation to the goods levy, the chief executive of the New Zealand Customs Service

**allocate**, in relation to New Zealand units,—

(a) means the allocation or provisional allocation of New Zealand units; but

(b) does not include the transfer of New Zealand units

**allocation plan** means an allocation plan issued under section 70

**animal material** has the same meaning as in section 4(1) of the Animal Products Act 1999

**animal product** has the same meaning as in section 4(1) of the Animal Products Act 1999

**animal welfare export certificate** means an animal welfare export certificate issued under section 46 of the Animal Welfare Act 1999

**annual financial statements of the Government** has the meaning given in section 2(1) of the Public Finance Act 1989

**approved overseas unit** means a unit, other than a Kyoto unit,—

(a) issued by an overseas registry; and

(b) prescribed as a unit that may be transferred to accounts in the Registry

**assigned amount unit** means a unit issued out of a Party's initial assigned amount and designated as an assigned amount unit by—

(a) the Registry; or

(b) an overseas registry of a Party listed in Annex B of the Protocol

**associated person** has the meaning given to it by subsection (3)

**Australian eligible industrial activity** means an activity that is, or is likely to be, specified as an emissions-intensive trade-exposed activity in respect of which a person may be allocated emissions units under Australian law

**cancel**, in relation to a unit, means the transfer of the unit to a cancellation account in the Registry with the effect specified in section 18CA(1)

**carbon accounting area** means an area of post-1989 forest land that—

(a) is defined by a person who is registered or has applied to register as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4; and

(b) meets any relevant criteria specified in regulations made under this Act; or

(c) is constituted as a carbon accounting area by operation of section 188(7)(b) or 192(3)(b)

**carbon dioxide equivalent**, in relation to a gas in Annex A of the Protocol, means the amount, in tonnes, of carbon dioxide that would produce the same global warming as the amount of that gas, calculated by multiplying the tonnes of that gas by its global warming potential (as determined under Article 5.3 of the Protocol, as if the commitment period were binding on New Zealand)

**carbon equivalence**, in relation to land that is the subject of an offsetting forest land application under section 186A, means that the offsetting forest land achieves, within the usual rotation period for forest species on the pre-1990 forest land, the same carbon stock as was contained in the pre-1990 forest land at the time of the clearing as determined in accordance with regulations made under section 186F

**carry-over** means the transfer of an assigned amount unit, certified emission reduction unit, or emission reduction unit from the relevant commitment period to a subsequent commitment period so that the unit remains capable of being transferred, retired, cancelled, or carried-over in that subsequent commitment period

**CDM registry** means the registry established and maintained as the clean development mechanism registry under Article 12 of the Protocol

**certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a certified emission reduction unit by the CDM registry

**chief executive** means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of this Act

**clean development mechanism project** means a project undertaken under Article 12 of the Protocol for the benefit of a Party not listed in Annex I of the Convention

**clear**, in relation to a tree,—

(a) includes—

(i) felling, harvesting, burning, removing by mechanical means, spraying with a herbicide intended to kill the tree, or undertaking any other form of human activity that kills the tree; and

(ii) felling, burning, killing, uprooting, or destroying by a natural cause or event; but

(b) does not include pruning or thinning

**coal** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

**commitment period reserve** means a number of Kyoto units equal to the lesser of—

(a) 90% of the assigned amount units issued out of New Zealand's initial assigned amount; or

(b) 5 times the number of tonnes of carbon dioxide equivalent of human-induced greenhouse gases emitted from the sources listed in Annex A of the Protocol in the most recent year, as estimated by the most recent inventory of greenhouse gases that has been reported in accordance with Article 7 of the Protocol and reviewed in accordance with Article 8 of the Protocol

**Conference of the Parties** means the Conference of the Parties to the Convention

**consolidated group** means a consolidated group formed under section 150

**Convention**—

(a) means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, a copy of the English text of which is set out in Schedule 1; and

(b) includes any amendments made to the Convention that are, or will become, binding on New Zealand from time to time

**conversion account** means an account in the Registry used for the purpose of converting New Zealand units into assigned amount units

**convert**, in relation to a New Zealand unit, means the transfer of the unit to a conversion account in the Registry with the effect specified in section 18CA(5)

**Crown conservation contract** means a written agreement with the Crown (including a concession granted in accordance with Part 3B of the Conservation Act 1987) for the removal and storage of greenhouse gases on post-1989 forest land that is Crown land managed or administered under the Conservation Act 1987 or any of the Acts listed in Schedule 1 of that Act

**Crown holding account**—

(a) means a holding account that is established and held by the Crown in accordance with a direction of the Minister of Finance under section 6; and

(b) does not include a holding account opened by any other person on behalf of the Crown under section 18A

**Crown land** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

**dairy processing**, in relation to milk or colostrum, means the first occasion, other than at a farm dairy, on which the milk or colostrum is made subject to heat treatment, freezing, separation, concentration, filtering, blending, extraction of milk components, and the addition of other material, including (but not limited to) food, ingredients, additives, or processing aids as defined in the Food Standards Code

**deforest**, in relation to forest land,—

(a) means to convert forest land to land that is not forest land; and

(b) includes clearing forest land, where section 179 applies

**designated operational entity** means an operational entity designated under Article 12(5) of the Protocol

**disposal facility** means any facility, including a landfill,—

(a) at which waste is disposed; and

(b) at which the waste disposed includes waste from a household that is not entirely from construction, renovation, or demolition of a house; and

(c) that operates, at least in part, as a business to dispose of waste; but

(d) does not include a facility, or any part of a facility, at which waste is combusted for the purpose of generating electricity or industrial heat

**dispose**, in relation to waste,—

(a) means—

(i) the final or more than short-term deposit of waste into or onto land set apart for that purpose; or

(ii) the incineration of waste by deliberately burning the waste to destroy it; but

(b) does not include any deposit of biosolids for rehabilitation or other beneficial purposes

**document** means a document in any form whether or not signed or initialled or otherwise authenticated by its maker; and includes—

(a) any writing on any material:

(b) any information recorded or stored by means of any tape recorder, computer, or any other device; and any material subsequently derived from information so recorded or stored:

(c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) any book, map, plan, graph, or drawing:

(e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**elect**, in relation to a sink activity under Article 3.4 of the Protocol, means that a Party has advised the Secretariat of its intention to report to the Secretariat on that activity for the purpose of compliance with that Party's obligations under Article 3.1 of the Protocol

**electrical switchgear** means fittings for—

(a) controlling the distribution of electricity; or

(b) controlling or protecting electrical circuits and electrical equipment; or

(c) the transmission of electricity

**eligible activity** means—

(a) an eligible agricultural activity; or

(b) an eligible industrial activity

**eligible agricultural activity** means an activity or subclass of an activity listed in Part 5 of Schedule 3 in respect of which a person is required to surrender units for emissions under this Act

**eligible industrial activity** means an activity that is specified as an eligible industrial activity in regulations made under section 161A

**eligible land** means pre-1990 forest land (other than land that has been declared to be exempt land under section 183 or 184)

**eligible person** means a person who meets any requirements for receiving an allocation of New Zealand units specified in, as relevant,—

(a) section 80(1):

(b) section 85(1):

(c) any regulations made under this Act:

(d) an allocation plan

**emission reduction unit** means a unit derived from a joint implementation project, issued by converting an assigned amount unit or removal unit, and designated as an emission reduction unit by—

(a) the Registry; or

(b) an overseas registry of a Party listed in Annex B of the Protocol

**emissions**, in relation to an activity listed in Schedule 3 or 4, means carbon dioxide equivalent emissions of greenhouse gases from the activity

**emissions return**—

(a) means—

(i) an annual emissions return submitted under section 65; or

(ii) a quarterly emissions return submitted under section 66; or

(iii) a final emissions return submitted under section 118; or

(iv) an emissions return submitted under section 186, 187, 189, 191, 192, or 193; and

(b) includes any emissions return submitted under section 65, 66, 118, 186, 187, 189, 191, 192, or 193 that shows nil liability

**entity**, in relation to a group, means a reporting entity or a reporting entity's subsidiary, within the meaning of section 5 of the Financial Reporting Act 2013

**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

**executive board** means the board established under Article 12(4) of the Protocol

**exempt land**—

(a) means pre-1990 forest land that has been declared to be exempt land—

(i) under section 183; or

(ii) under section 184 and in respect of which the conditions in section 184(6) have been met; but

(b) does not include any forest land that met the definition in paragraph (a), but has been deforested, and in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2)

**exotic forest species** means a forest species that is not an indigenous forest species

**expire** or **expiry**, in relation to a long-term certified emission reduction unit or a temporary certified emission reduction unit, means a unit that is no longer capable of being—

(a) transferred to any account other than the general cancellation account; or

(b) retired

**export** has a corresponding meaning to exportation in section 5(1) of the Customs and Excise Act 2018

**farm dairy** has the same meaning as in section 4(1) of the Animal Products Act 1999

**financial year** has the same meaning as in section 2(1) of the Public Finance Act 1989

**first commitment period** means the commitment period from 1 January 2008 to 31 December 2012 (inclusive)

**fishing allocation plan** means the allocation plan that provides for the matters specified in section 74

**Food Standards Code** has the same meaning as in section 4(1) of the Animal Products Act 1999

**forest land**—

(a) means an area of land of at least 1 hectare that has, or is likely to have, tree crown cover from forest species of more than 30% in each hectare; and

(b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but

(c) does not include—

(i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 metres; or

(ii) an area of land where the forest species have, or are likely to have, a tree crown cover of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b)

**forest species** means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located, but does not include tree species grown or managed primarily for the production of fruit or nut crops

**fugitive coal seam gas** means gas released by the activity of mining coal as calculated in accordance with any regulations made under this Act

**general cancellation account** means an account in the Registry for the purpose of holding units on behalf of the Crown that are cancelled for any reason other than sink activities being a source of emissions or a determination that New Zealand is not in compliance with Article 3.1 of the Protocol

**goods** means all kinds of movable property, including motor vehicles

**goods levy** means the synthetic greenhouse gas levy imposed by section 227(1)(b)

**greenhouse gas** means a gas listed in Annex A of the Protocol

**group** has the same meaning as in section 5 of the Financial Reporting Act 2013

**holding account** means an account in the Registry for the purpose of holding units that have not been retired, surrendered, converted, or cancelled

**import** has a corresponding meaning to importation in section 5(1) of the Customs and Excise Act 2018

**importer** has the same meaning as in section 5(1) of the Customs and Excise Act 2018

**indigenous forest species** means a forest species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance

**indirect greenhouse gas**—

(a) means a gas that—

(i) reacts with other gases to form a greenhouse gas; or

(ii) changes the chemistry of the atmosphere in a way that increases the lifetime of other greenhouse gases; and

(b) includes, but is not limited to, carbon monoxide, nitrogen oxides, non-methane volatile organic compounds, and sulphur dioxide

**industrial or trade premises** means any premises used for any industrial or trade purposes, or any premises used for the storage, transfer, treatment, or dis-

posal of waste materials or for other waste-management purposes; but does not include any production land

**initial assigned amount** means the allowance of emissions of greenhouse gas assigned to a Party listed in Annex B of the Protocol, measured in tonnes of carbon dioxide equivalent, and calculated under Articles 3.7 and 3.8 of the Protocol

**international transaction log** means an international log established and maintained by the Secretariat to confirm the validity of transactions, including the issue and transfer of Kyoto units between registries and between accounts in the Registry

**inventory agency** means the chief executive

**joint implementation project** means a project aimed at reducing the human-induced emissions of greenhouse gases by sources or enhancing the human-induced removals by sink activities of a Party listed in Annex I of the Convention that is undertaken under Article 6 of the Protocol

**Kyoto units** means all of the unit types specified in, or in accordance with, the Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units)

**landowner**,—

(a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2A of the Crown Minerals Act 1991); and

(b) in relation to land other than Crown land, means—

  (i) the legal owner of a freehold estate in the land; or

  (ii) if the land is Maori customary land (as defined in section 4 of Te Ture Whenua Maori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Maori Act 1993; or

  (iii) if the land is Maori freehold land (as defined in section 4 of Te Ture Whenua Maori Act 1993), the legal owner of the land

**leviable goods** means goods that contain a specified synthetic greenhouse gas, but does not include an air-conditioning system that is part of a motor vehicle

**leviable motor vehicle** means a motor vehicle that includes, as part of the motor vehicle, an air-conditioning system containing a specified synthetic greenhouse gas

**levy year** means the period of 12 months starting on 1 January and ending with the close of 31 December

**local authority** means a local authority within the meaning of the Local Government Act 2002

**long-term certified emission reduction replacement account** means an account in the Registry—

(a) for the purpose of—

(i) replacing long-term certified emission reduction units in that account or the retirement account, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

(ii) replacing long-term certified emission reduction units, no more than 30 days before they are due to expire as a result of a reversal of sinks or non-receipt of a certification report, with—

(A) assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

(B) long-term certified emission reduction units from the same clean development mechanism project; and

(b) that is limited to the relevant commitment period

**long-term certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a long-term certified emission reduction unit by the CDM registry

**Maori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**member**, in relation to an unincorporated body, means a partner, joint venturer, trustee, joint owner of land, or other member of the body

**merchantable timber** means timber from the stem of a tree more than 10 years old, other than—

(a) the stump; and

(b) wood that is decayed or grossly distorted; and

(c) wood that is less than 10 centimetres in diameter, excluding the bark

**mining** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

**Minister** means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of this Act

**motor vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998

**motor vehicle levy** means the synthetic greenhouse gas levy imposed by section 227(1)(a)

**natural gas** means—

(a) all gaseous hydrocarbons produced from wells, including wet gas and residual gas remaining after the extraction of condensate from wet gas; and

(b) liquid hydrocarbons, other than condensate, extracted from wet gas and sold as natural gas liquids, for example, liquid petroleum gas; and

(c) coal seam gas

**New Zealand unit** means a unit issued by the Registrar and designated as a New Zealand unit

**nominated entity**, in relation to a consolidated group, means an entity appointed under section 150(4)(b) or 152(3)(b) as the nominated entity of a consolidated group

**non-compliance cancellation account** means an account in the Registry for the purpose of holding any units on behalf of the Crown that are cancelled as a result of a determination that New Zealand is not in compliance with Article 3.1 of the Protocol

**obligation fuel** means any fuel specified as obligation fuel in regulations made under this Act

**obligation jet fuel** means any jet fuel specified as obligation jet fuel in regulations made under this Act

**offsetting forest land** means land that the EPA has approved as offsetting forest land under section 186B

**operating**, in relation to a disposal facility, means being in control of the facility

**ordinary hours of business** means the hours of 8 am to 6 pm from Monday to Friday

**overseas registry** means—

(a) a registry of a Party listed in Annex B of the Protocol (other than New Zealand):

(b) the CDM registry

(c) any other prescribed registry

**participant** means a person who is a participant under section 54

**Party** means a Party to the Protocol

**performance**, in relation to ruminants and other farmed livestock, means the production statistics with respect to those animals, including, but not limited to, weight, milk production, lambing and calving percentage, and wool weight

**post-1989 forest land** means forest land that—

(a) was not forest land on 31 December 1989; or

(b) was forest land on 31 December 1989 but was deforested in the period beginning on 1 January 1990 and ending on 31 December 2007; or

(c) was pre-1990 forest land, other than exempt land,—

(i) that was deforested on or after 1 January 2008; and

(ii) in respect of which any liability to surrender units arising in relation to an activity listed in Part 1 of Schedule 3 has been satisfied; or

(ca) was pre-1990 forest land, other than exempt land, that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land; or

(cb) was pre-1990 offsetting forest land that was deforested after 1 January 2013 and in respect of which any liability to surrender units arising in relation to an activity listed in Part 1A of Schedule 3 has been satisfied; or

(d) was exempt land—

(i) that has been deforested; and

(ii) in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2)

**pre-1990 forest land**—

(a) means forest land—

(i) that was forest land on 31 December 1989; and

(ii) that remained as forest land on 31 December 2007 (taking into account subsection (5)); and

(iii) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but

(b) does not include any forest land that met the definition in paragraph (a), but—

(i) has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or

(ii) was declared to be exempt land, has been deforested, and the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3 had the land not been exempt land have been surrendered under section 187(2)(b)

**pre-1990 forest land allocation plan** means an allocation plan that provides for the matters specified in section 72

**pre-1990 offsetting forest land** means offsetting forest land that the EPA has noted as pre-1990 offsetting forest land on the register under section 186D(3)

**previous commitment period** means a commitment period, including (but not limited to) the first commitment period, that—

(a) is specified or determined under the Protocol; and

(b) begins and ends before a subsequent commitment period

**primary representative** means an individual appointed by an account holder as a primary representative of the account holder in accordance with any regulations made under Part 2

**production land** means any land used for the production of primary products (including agricultural, pastoral, horticultural, and forestry products); but does not include any buildings

**Protocol**—

(a) means the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, a copy of the English text of which is set out in Schedule 2; and

(b) includes any amendments made to the Protocol that are, or will become, binding on New Zealand from time to time

**provisional allocation** means a provisional allocation made under section 81

**public notice** means a notice published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin, and made accessible via the Internet

**recover**, in relation to dispose,—

(a) means the extraction of materials or energy from waste for further use or processing; and

(b) includes making waste into compost

**recycle**, in relation to dispose, means the reprocessing of waste to produce new materials

**registered**,—

(a) in relation to a motor vehicle, has the same meaning as in section 2(1) of the Land Transport Act 1998; but

(b) otherwise means registered in accordance with this Act

**registered forestry right** means a forestry right registered under the Forestry Rights Registration Act 1983

**registered lease**,—

(a) in relation to a lease in respect of land registered under the Land Transfer Act 2017, means a lease registered under that Act:

(b) in relation to a lease in respect of land that is not registered under the Land Transfer Act 2017, means a lease registered under the Deeds Registration Act 1908

**Registrar** means the person appointed under section 11

**Registrar of Motor Vehicles** has the same meaning as Registrar in section 233(1) of the Land Transport Act 1998

**Registry** means the Registry established in New Zealand for the purpose set out in section 10

**relevant commitment period** means a commitment period that is specified or determined under the Protocol, and—

(a) in which a particular activity or transaction occurs; or

(b) to which an account or Kyoto unit is associated

**removal activity** means an activity that is listed in Part 1 or 2 of Schedule 4

**removal unit** means a unit—

(a) derived from a Party's sink activities that result in a net removal of greenhouse gases; and

(b) designated as a removal unit by—

(i) the Registry; or

(ii) an overseas registry of a Party listed in Annex B of the Protocol

**removals**, in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—

(a) removed from the atmosphere; or

(b) not released into the atmosphere; or

(c) a reduction from emissions reported in—

(i) New Zealand's annual inventory report under section 32 as required under the Convention or Protocol for any year; or

(ii) any emissions report from New Zealand under a successor international agreement

**retire**, in relation to a Kyoto unit, means the transfer of that Kyoto unit to a retirement account in the Registry with the effect specified in section 18CA(2)

**retirement account** means an account in the Registry for the purpose of holding Kyoto units that the Minister of Finance has retired on behalf of the Crown

**reuse**, in relation to dispose, means the further use of waste in its existing form for the original purpose of the materials or products that constitute the waste or for a similar purpose

**Secretariat** means the Secretariat of the Convention

**sink activity**, in relation to greenhouse gas removals, means—

(a) an activity under Article 3.3 of the Protocol; or

(b) an elected activity under Article 3.4 of the Protocol

**sink cancellation account** means an account in the Registry for the purpose of holding units that the Minister of Finance has cancelled on behalf of the Crown as a result of sink activities resulting in a net source of emissions

**solid biofuel** means wood, wood waste, sulphate lyes, or charcoal

**specified synthetic greenhouse gas** means a hydrofluorocarbon or perfluorocarbon specified in regulations made under section 246(1)(a)

**subsequent commitment period** means a commitment period that—

(a) is specified or determined under the Protocol; and

(b) begins and ends after a previous commitment period

**supervisory committee** means the committee established to supervise the verification of emission reduction units generated by project activities under Article 6 of the Protocol

**surrender** means the transfer of a unit to a surrender account in the Registry with the effect specified in section 18CA(3) or (4)

**surrender account** means an account in the Registry for the purpose of holding units that account holders have surrendered

**synthetic greenhouse gas** means—

(a) a hydrofluorocarbon; or

(b) a perfluorocarbon

**synthetic greenhouse gas levy** or **levy** means the levy imposed by section 227

**temporary certified emission reduction replacement account** means an account in the Registry—

(a) for the purpose of replacing temporary certified emission reduction units, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, removal units, or temporary certified emission reduction units that are due to expire in a subsequent commitment period; and

(b) that is limited to the relevant commitment period

**temporary certified emission reduction unit** means a unit derived from a clean development mechanism project issued by the CDM registry, and designated as a temporary certified emission reduction unit by the CDM registry

**the Customs** has the same meaning as Customs in section 5(1) of the Customs and Excise Act 2018

**tree weed** means a tree that is defined or designated as—

(a) a pest in a pest management strategy under the Biosecurity Act 1993; or

(b) a tree weed in regulations made under this Act

**tree weed spread** means the spread of a tree weed by natural regeneration

**unincorporated body**—

(a) means an unincorporated body of persons; and

(b) includes (but is not limited to)—

(i) a partnership, a joint venture, or the trustees of a trust; and

(ii) if land, a lease, a forestry right, or a Crown conservation contract is not owned, held, or entered into by a partnership, joint venture, or the trustees of a trust, 3 or more joint—

(A) landowners; or

(B) leaseholders; or

(C) holders of a registered forestry right; or

(D) parties to a Crown conservation contract; but

(c) does not, unless they are partners, joint venturers, or trustees of a trust, include 2 joint—

(i) landowners; or

(ii) leaseholders; or

(iii) holders of a registered forestry right; or

(iv) parties to a Crown conservation contract

**unit** means a Kyoto unit, a New Zealand unit, or an approved overseas unit

**usual rotation period**, in relation to a forest species on land that is the subject of an offsetting forest land application under section 186A, means the usual rotation period prescribed for a forest species in any regulations made under this Act

**waste** means any thing that has been disposed of or discarded—

(a) including (but not limited to) any disposed of or discarded thing that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste); but

(b) excluding any solid biofuel combusted for the purposes of generating electricity or industrial heat

**year** means a calendar year ending on 31 December.

(2) Terms and expressions used and not defined in this Act but defined in the Convention or Protocol have, unless the context otherwise requires, the same meaning as in the Convention or Protocol.

(3) A person is an **associated person** in relation to 1 or more other persons if—

(a) each person is a body corporate and each of the bodies corporate—

(i) consist substantially of the same members or shareholders; or

(ii) are under the control of the same persons; or

(b) any of the bodies corporate—

(i) has the power, directly or indirectly, to exercise, or control the exercise of, 25% or more of the voting power at a meeting of the other; or

(ii) is able to appoint or control 25% or more of the governing body of the other.

(4) For the purposes of the definition of dispose, a deposit of waste is short-term if, not later than 6 months after the deposit (or any later time that the chief executive has agreed to in writing), the waste is—

(a) reused or recycled; or

(b) recovered; or

(c) removed from the land for any other reason.

(5) Despite anything in this Act, a hectare of land is not to be treated as pre-1990 forest land if,—

(a) on 1 January 2008, the land had—

(i) no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or was likely to have, tree crown cover of an average width of less than 30 metres; and

(ii) no other merchantable timber from exotic forest species; and

(b) 4 years after the date on which the land met the conditions in paragraph (a), it is not forest land and no allocation has been made in respect of the land under the pre-1990 forest land allocation plan.

(6) For the purposes of sections 62, 65, 66, 67, 118, 187, 189, 191, 192, and 193, **activity** or **activities**, in relation to a participant who submits an emissions return that shows nil liability, includes any thing that would have been an activity listed in Schedule 3 or 4 if it had been carried out as, or to the extent, described in Schedule 3 or 4 during the period reported on in the emissions return.

(7) For the purposes of the definition of landowner in relation to the activity listed in Part 1 of Schedule 3, 1 or more pieces of land (**land A**) and 1 or more pieces of other land (**land B**) that are owned by the same person are to be treated as if they were owned by different persons if—

(a) land A and land B are held under different trusts; and

(b) each trust has the same trustee or trustees; and

(c) the trustees hold land A and land B in their capacity as professional trustees (as defined in section 183(7)).

Section 4(1) **account number**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **agency**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **allocate**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **allocation plan**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **allocation plan**: amended, on 8 December 2009, by section 8(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **animal material**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal product**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal welfare export certificate**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **annual financial statements of the Government**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **approved overseas unit**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **assigned amount unit**: amended, on 26 September 2008, by section 6(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **associated person**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Australian eligible industrial activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **cancel**: substituted, on 26 September 2008, by section 6(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon accounting area**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon accounting area** paragraph (b): amended, on 8 December 2009, by section 8(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **carbon accounting area** paragraph (c): added, on 8 December 2009, by section 8(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **carbon dioxide equivalent**: amended, on 1 January 2013, by section 7(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **carbon dioxide equivalent**: amended, on 26 September 2008, by section 6(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon equivalence**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **carry-over**: amended, on 26 September 2008, by section 6(6)(a) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carry-over**: amended, on 26 September 2008, by section 6(6)(b) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carry-over**: amended, on 1 August 2003, by section 5(1)(a) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **certified emission reduction unit**: amended, on 26 September 2008, by section 6(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **chief executive**: substituted, on 5 December 2011, by section 4(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **chief executive responsible for the administration of this Act**: repealed, on 5 December 2011, by section 4(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **clean development mechanism project**: amended, on 1 August 2003, by section 5(1)(b) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **clear**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **coal**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **commitment period**: repealed, on 1 August 2003, by section 5(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **commitment period reserve**: amended, on 26 September 2008, by section 6(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **commitment period reserve** paragraph (b): amended, on 26 September 2008, by section 6(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **consolidated group**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **Convention**: substituted, on 8 December 2009, by section 8(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **conversion account**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **convert**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Crown conservation contract**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Crown holding account**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **Crown land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dairy processing**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **deforest**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **designated operational entity**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **disposal facility**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dispose**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **document**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **draft allocation plan**: repealed, on 8 December 2009, by section 8(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **electrical switchgear**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **eligible activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible agricultural activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible industrial activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible land**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible person**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **emission reduction unit**: amended, on 26 September 2008, by section 6(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **emissions**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **emissions return**: replaced, on 1 January 2013, by section 7(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **entity**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(1) **Environmental Protection Authority** or **EPA**: inserted, on 5 December 2011, by section 4(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **executive board**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **exempt land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **exotic forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **expire** or **expiry**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **export**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **export**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **farm dairy**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **financial year**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **first commitment period**: inserted, on 1 August 2003, by section 5(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **fishing allocation plan**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **Food Standards Code**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest land** paragraph (a): amended, on 8 December 2009, by section 8(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest land** paragraph (c)(i): amended, on 8 December 2009, by section 8(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest land** paragraph (c)(ii): amended, on 8 December 2009, by section 8(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest species**: amended, on 8 December 2009, by section 8(10) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **fugitive coal seam gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **goods**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **goods levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **group**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(1) **holding account**: amended, on 26 September 2008, by section 6(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **holding account**: amended, on 1 August 2003, by section 5(1)(c) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **import**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **import**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **importer**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **importer**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **independent transaction log**: repealed, on 26 September 2008, by section 6(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **indigenous forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **initial assigned amount**: amended, on 26 September 2008, by section 6(13) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **international transaction log**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **inventory agency**: substituted, on 5 December 2011, by section 4(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Kyoto units**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **landowner**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **landowner** paragraph (a): amended, on 24 May 2013, by section 65 of the Crown Minerals Amendment Act 2013 (2013 No 14).

Section 4(1) **leviable goods**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **leviable motor vehicle**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **levy year**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1): **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 4(1) **long-term certified emission reduction replacement account**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **long-term certified emission reduction unit**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **long-term certified emission reduction unit**: amended, on 26 September 2008, by section 6(15) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Maori land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **member**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **merchantable timber**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **mining**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister**: substituted, on 5 December 2011, by section 4(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Minister responsible for the administration of this Act**: repealed, on 5 December 2011, by section 4(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Minister responsible for the inventory agency**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister responsible for the Registry**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **motor vehicle**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **motor vehicle levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **natural gas**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **New Zealand Customs Service** and **the Customs**: repealed, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **New Zealand unit**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **nominated entity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **obligation fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **obligation jet fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **offsetting forest land**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **operating**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **overseas registry** paragraph (c): added, on 26 September 2008, by section 6(16) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **participant**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **post-1989 forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **post-1989 forest land** paragraph (b): amended, on 8 December 2009, by section 8(11) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **post-1989 forest land** paragraph (ca): inserted, on 1 January 2013, by section 7(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **post-1989 forest land** paragraph (cb): inserted, on 1 January 2013, by section 7(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **pre-1990 forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **pre-1990 forest land allocation plan**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **pre-1990 offsetting forest land**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **previous commitment period**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **primary representative**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Protocol**: substituted, on 8 December 2009, by section 8(12) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **provisional allocation**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **public notice**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **recover**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **recycle**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **registered**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **registered forestry right**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **registered lease**: replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 4(1) **Registrar**: inserted, on 5 December 2011, by section 4(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Registrar of Motor Vehicles**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **relevant commitment period**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **relevant commitment period** paragraph (b): amended, on 26 September 2008, by section 6(17) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removal activity**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removal unit** paragraph (b): amended, on 26 September 2008, by section 6(18) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removals**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **representative identifier**: repealed, on 26 September 2008, by section 6(19) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **retire**: substituted, on 26 September 2008, by section 6(20) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **retirement account**: amended, on 26 September 2008, by section 6(21) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **reuse**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **solid biofuel**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **specified synthetic greenhouse gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **subsequent commitment period**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **surrender**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **surrender account**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **synthetic greenhouse gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **synthetic greenhouse gas levy** or **levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **temporary certified emission reduction replacement account**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **temporary certified emission reduction unit**: inserted, on 1 August 2003, by section 5(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **temporary certified emission reduction unit**: amended, on 26 September 2008, by section 6(22) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **the Customs**: inserted, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **tree weed**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **tree weed spread**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **unincorporated body**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **unit**: substituted, on 26 September 2008, by section 6(23) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **usual rotation period**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **waste**: substituted, on 8 December 2009, by section 8(13) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **year**: added, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(3): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(4): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(5): substituted, on 8 December 2009, by section 8(14) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(6): inserted, on 1 January 2013, by section 7(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(7): inserted, on 1 January 2013, by section 7(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 5 Act binds the Crown

This Act binds the Crown.

# Part 2
# Institutional arrangements

## Subpart 1—Ministerial powers

Subpart 1 heading: replaced, on 1 January 2013, by section 8 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 6 Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units

The Minister of Finance may, on behalf of the Crown,—

(a) direct the Registrar to establish or close Crown holding accounts:

(b) direct the Registrar to transfer units to any holding account in the Registry or to an overseas registry:

(c) buy or sell units, or otherwise acquire or dispose of units:

(d) enter into agreements to buy or sell units, or otherwise acquire or dispose of units, with any person (including any other Party):

(e) buy or sell, or enter into any agreement to buy or sell, or otherwise acquire or dispose of, any financial derivatives or other financial instruments relating to units or in connection with transactions relating to units:

(f) appoint agents to conduct the activities referred to in paragraphs (a) to (e) on the terms and conditions that the Minister of Finance thinks fit.

Section 6 heading: amended, on 8 December 2009, by section 9(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 6(a): amended, on 8 December 2009, by section 9(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 6A Minister's power to sell by auction

If regulations are made under section 30G(1)(p), the Minister may, on behalf of the Crown,—

(a) sell New Zealand units by auction within a prescribed overall limit:

(b) appoint agents to conduct the sale on the terms and conditions that the Minister thinks fit.

Section 6A: inserted, on 1 January 2013, by section 9 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 7 Minister of Finance may give directions to Registrar regarding accounts and units

(1) The Minister of Finance may give directions to the Registrar to—

(a) establish the following accounts in the Registry for the Crown:

(i) a sink cancellation account:

(ii) a non-compliance cancellation account:

(iii) a general cancellation account:

(iv) a retirement account:

(v) a long-term certified emission reduction replacement account:

(vi) a temporary certified emission reduction replacement account:

(vii) a surrender account:

(viii) a conversion account:

(b) issue assigned amount units in the Registry:

(c) issue removal units or emission reduction units:

(d) transfer, subject to any prescribed restriction or prohibition, units (other than long-term certified emission reduction units or temporary certified emission reduction units) from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the non-compliance cancellation account, the retirement account, the surrender account, the conversion account, the temporary certified emission reduction replacement account, or the sink cancellation account:

(da) transfer long-term certified emission reduction units or temporary certified emission reduction units from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the temporary certified emission reduction replacement account, or the retirement account:

(db) transfer Kyoto units from the surrender account to a Crown holding account if the units are not required, at the time of the transfer, to meet—

(i) New Zealand's international obligations; or

(ii) any equivalent domestic targets:

(e) carry-over assigned amount units, certified emission reduction units, and emission reduction units held in holding accounts:

(2) Despite subsection (1), or any regulations made under this Act, the Minister of Finance may not give a direction to transfer units from an account held by an account holder other than the Crown to another account in the Registry, unless—

(a) the Minister of Finance has the written consent of the account holder; or

(b) if written consent is not given, the Minister of Finance gives the account holder reasonable notice and—

(i) the transfer is required to comply with New Zealand's obligations under the Protocol; or

(ii) the account holder has failed to comply with Part 2 or any regulations made under section 30G; or

(c) section 30F(3) applies.

(3) For the purposes of subsection (2)(b)(i), **reasonable notice** means sufficient opportunity in the circumstances for the relevant account holder to make a written submission to the Minister of Finance on the transfer of the units before the units are transferred.

Section 7(1)(a)(v): added, on 19 November 2007, by section 6(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(a)(vi): added, on 19 November 2007, by section 6(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(a)(vii): added, on 26 September 2008, by section 7(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(a)(viii): added, on 26 September 2008, by section 7(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(b): substituted, on 19 November 2007, by section 6(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(d): substituted, on 19 November 2007, by section 6(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(d): amended, on 26 September 2008, by section 7(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(d): amended, on 26 September 2008, by section 7(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(da): inserted, on 19 November 2007, by section 6(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(db): inserted, on 1 January 2013, by section 10 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 7(1)(e): substituted, on 19 November 2007, by section 6(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(e): amended, on 26 September 2008, by section 7(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(2): added, on 19 November 2007, by section 6(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(2)(b): substituted, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(2)(c): added, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(3): added, on 19 November 2007, by section 6(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 8 Registrar must give effect to directions of Minister of Finance

(1) The Registrar must give effect to any directions given by the Minister of Finance under section 6 or section 7 in accordance with, and subject to, the procedures set out in subpart 2 of this Part and regulations made under section 30G.

(2) To avoid doubt, the Crown Entities Act 2004 does not apply to a direction by the Minister of Finance to the Registrar.

Section 8(1): amended, on 26 September 2008, by section 8 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 8(2): added, on 5 December 2011, by section 5 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 8A Minister of Finance must publish directions

As soon as practicable after giving a direction under section 6 or 7, the Minister of Finance must publish a copy of the direction on the Registry's Internet site.

Section 8A: inserted, on 19 November 2007, by section 7 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 9 Minister of Finance may obtain information from inventory agency and Registrar

For the purposes of managing the Crown's holding of units and discharging New Zealand's obligations under section 32(1)(b), the Minister of Finance may, as and when he or she thinks fit,—

(a) direct the inventory agency to provide information estimating New Zealand's human-induced emissions of greenhouse gases by sources and removals by sink activities:

(b) direct the Registrar to provide information on those units, including, but not limited to, information indicating—

(i) how many units the Crown holds; and

(ii) how many units the Crown has issued or acquired, transferred, retired, replaced, cancelled, and carried-over.

Section 9: amended, on 19 November 2007, by section 8(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 9(b)(ii): amended, on 26 September 2008, by section 9 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 9(b)(ii): amended, on 19 November 2007, by section 8(2)(a) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 9(b)(ii): amended, on 19 November 2007, by section 8(2)(b) of the Climate Change Response Amendment Act 2006 (2006 No 59).

## Subpart 1A—Chief executive

Subpart 1A: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 9A Functions of chief executive

The functions of the chief executive are to—

(a) advise the Minister; and

(b) be the inventory agency; and

(c) publish information on the Internet in accordance with this Act.

Section 9A: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 9B Delegation by chief executive

(1) The chief executive may delegate any of his or her functions, duties, and powers under this Act to the EPA.

(2) Section 41 of the State Sector Act 1988 applies to a delegation under this section as if the EPA were an employee of the chief executive.

Section 9B: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## Subpart 2—Registry

*Purpose of Registry*

### 10 Purpose of Registry

(1) The purpose of the Registry in relation to Kyoto units is to—

(a) ensure the accurate, transparent, and efficient accounting of—

(i) the issue, holding, transfer, retirement, surrender, and cancellation of Kyoto units; and

(ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and

(iii) the replacement of expired long-term certified emission reduction units and expired temporary certified emission reduction units; and

(b) ensure, in accordance with Article 7.4 of the Protocol, the accurate, transparent, and efficient exchange of information between—

(i) the Registry and overseas registries; and

(ii) the Registry and the international transaction log.

(c) *[Repealed]*

(2) The purpose of the Registry in relation to New Zealand units and approved overseas units is to ensure—

(a) the accurate, transparent, and efficient accounting of—

(i) the issue of New Zealand units; and

(ii) the holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and

(iii) the conversion of New Zealand units into assigned amount units; and

(b) the accurate, transparent, and efficient exchange of information between the Registry and overseas registries.

(3) The purpose of the Registry in relation to all units is to facilitate the exchange of information between those persons with functions, duties, and powers under this Act to enable all of them to perform their functions and duties, and exercise their powers.

Section 10(1): amended, on 26 September 2008, by section 10(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a): amended, on 1 January 2013, by section 11 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 10(1)(a): amended, on 26 September 2008, by section 10(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a)(i): amended, on 26 September 2008, by section 10(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a)(i): amended, on 26 September 2008, by section 10(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a)(i): amended, on 19 November 2007, by section 9(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 10(1)(a)(iii): added, on 19 November 2007, by section 9(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 10(1)(b)(ii): amended, on 26 September 2008, by section 10(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(b)(ii): amended, on 26 September 2008, by section 10(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(c): repealed, on 26 September 2008, by section 10(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(2): added, on 26 September 2008, by section 10(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(3): added, on 26 September 2008, by section 10(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Registrar*

## 11 EPA to appoint Registrar

The EPA must appoint an employee of the EPA as the Registrar.

Section 11: substituted, on 5 December 2011, by section 7 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 12 Registrar responsible for Registry

The Registrar is responsible for the operation, on behalf of the Crown, of the Registry.

Section 12: amended, on 5 December 2011, by section 8 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 13 Registrar may refuse access to, or suspend operation of, Registry

The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),—

(a) for maintenance; or

(b) in response to technical difficulties; or

(c) to ensure the security or integrity of the Registry; or

(d) to give effect to New Zealand's international obligations.

Section 13: substituted, on 19 November 2007, by section 10 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 14 Registrar must give effect to directions

The Registrar must give effect to any direction relating to the transfer of units from a Crown holding account (or in the case of reimbursement, from a surrender account) to the holding account of an eligible person or a participant (or, if required, in the prescribed circumstances to another holding account notified by one of those persons) that is given by a Minister authorised to give such directions in accordance with a provision in Part 4 or 5 of this Act or the EPA.

Section 14: substituted, on 8 December 2009, by section 10 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 14: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 15 Registrar to allocate unique numbers

(1) The Registrar must, in accordance with regulations made under this Act,—

(a) allocate a unique account number to each account when the account is created; and

(b) allocate a unique serial number to—

(i) each assigned amount unit when the Registrar records the initial assigned amount; and

(ii) each removal unit when the Registrar issues the removal unit.

(1A) The Registrar may, subject to regulations made under this Part, allocate a unique serial number to—

(i) a New Zealand unit; or

(ii) an approved overseas unit; or

(iii) a class or subclass of New Zealand units; or

(iv) a class or subclass of approved overseas units.

(2) If the Minister of Finance directs the Registrar to issue emission reduction units under section 7, the Registrar must convert the assigned amount units or removal units specified by the Minister of Finance into emission reduction units by—

(a) giving the emission reduction units the serial numbers of the units from which the emission reduction units are being converted; and

(b) replacing the identifiers on the converted units with identifiers that designate that the converted units are emission reduction units.

Section 15 heading: amended, on 26 September 2008, by section 13(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 15(1A): inserted, on 26 September 2008, by section 13(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 16 Carry-over of certain Kyoto units

(1) An account holder may, subject to regulations made under this Act, apply to the Registrar to carry-over assigned amount units, certified emission reduction units, or emission reduction units held in that account holder's holding account.

(2) Long-term certified emission reduction units, removal units, and temporary certified emission reduction units may not be carried-over.

Section 16: substituted, on 19 November 2007, by section 12 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 16 heading: amended, on 26 September 2008, by section 14(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 16(1): amended, on 26 September 2008, by section 14(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 16(2): amended, on 26 September 2008, by section 14(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 17 Commitment period reserve

(1) Despite anything in this Act, the Registrar may not transfer or cancel Kyoto units if the transfer or cancellation would cause the total of the Kyoto units in all holding accounts and the retirement account in the unit register, excluding those Kyoto units subject to a notification from the international transaction log under section 21(3), to fall below the commitment period reserve.

(2) This section does not apply to transfers or cancellations of Kyoto units that the Registrar has issued as emission reduction units that were verified by the supervisory committee.

Section 17(1): substituted, on 26 September 2008, by section 15(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 17(2): amended, on 26 September 2008, by section 15(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 17A Power of Registrar to delegate

(1) The Registrar may, in writing, delegate to any person who is employed by the EPA or in the State services all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.

(2) Subject to any general or special directions given or conditions specified at any time by the Registrar, the person to whom any functions, duties, or powers are delegated under this section must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by a section of this Act and not by delegation.

(3) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be to a specified person or to persons of a specified class, or may be to the holder or holders for the time being of a specified office or specified classes of offices.

(5) Every delegation under this section is revocable in writing at will by the Registrar, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.

(6) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

(7) For the purposes of this section, **State services** has the same meaning as in section 2 of the State Sector Act 1988.

Section 17A: inserted, on 8 December 2009, by section 11 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 17A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

*Unit register*

### 18 Form and content of unit register

(1) The Registry must have a unit register that is—

(a) in electronic form; and

(b) accessible via the Registry's Internet site; and

(c) operated at all times, unless the Registrar suspends its operation (in whole or in part) under section 13 or as prescribed in regulations.

(2) The unit register must contain—

(a) a record of the holdings of units in holding accounts in New Zealand; and

(b) the particulars of transactions, including, but not limited to,—

(i) the issue, transfer, retirement, surrender, conversion, and cancellation of units; and

(ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and

(iii) the replacement of long-term certified emission reduction units and temporary certified emission reduction units; and

(c) any other matters that are required to be registered under this Act or regulations made under this Act.

(3) A unit recorded in the unit register is—

(a) indivisible with respect to the issue, holding, transfer, retirement, replacement, surrender, carry-over, cancellation, and conversion of a unit within the unit register; and

(b) transferable, subject to any regulations made under this Act,—

(i) within the unit register; or

(ii) between the unit register and overseas registries.

Section 18(1)(b): amended, on 19 November 2007, by section 13(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(2)(b)(i): amended, on 26 September 2008, by section 16(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18(2)(b)(i): amended, on 19 November 2007, by section 13(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(2)(b)(iii): added, on 19 November 2007, by section 13(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(3): added, on 19 November 2007, by section 13(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(3)(a): substituted, on 26 September 2008, by section 16(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18A Opening holding accounts

(1) Any person may submit an application to the Registrar to open 1 or more holding accounts in the unit register by using the form and paying the fees (if any) prescribed in regulations made under this Act.

(2) The Registrar may approve the opening of a holding account subject to any regulations made under this Act.

(3) If the Registrar approves an application to open a holding account, the Registrar must, as soon as practicable,—

(a) open a holding account in the applicant's name; and

(b) provide the applicant with an account number.

(4) If the application is incomplete, the Registrar must, as soon as practicable, ask the applicant to provide the information or fee (if any) that is required to make the application complete.

(5) The Registrar may refuse to provide a holding account to any applicant who provides an incomplete application.

(6) A holding account is subject to any regulations made under this Act.

Section 18A: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18A(3)(b): amended, on 26 September 2008, by section 17 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18B Closing holding accounts

(1) An account holder may submit a request to the Registrar to close 1 or more of that account holder's holding accounts in the unit register by using the form and paying the fee (if any) prescribed in regulations made under this Act.

(2) The EPA may give a direction to the Registrar to close an account holder's holding account—

(a) if the EPA has the written consent of the account holder; or

(b) where written consent is not given,—

(i) if the EPA has given the account holder reasonable notice; and

(ii) if—

(A) the closure is required to comply with New Zealand's obligations under the Protocol; or

(B) the account holder has failed to comply with this Part or any regulations made regarding the matters specified in section 30G; or

(C) the EPA is satisfied that the account holder no longer requires the account.

(3) If there are any units remaining in a holding account when it is closed,—

(a) the units are forfeited to the Crown; and

(b) the Registrar must, as soon as practicable, transfer the units to a Crown holding account.

(4) If a request is incomplete, the Registrar must, as soon as practicable, ask the account holder to provide the information or fee (if any) that is required to make the request complete.

(5) The Registrar may not close a holding account if the account holder provides an incomplete request.

(6) For the purposes of subsection (2)(b)(i), **reasonable notice** means sufficient opportunity in the circumstances to—

(a) transfer the units to another account before the holding account that is the subject of the closure direction is closed; or

(b) in the case of non-compliance, comply with this Part or any regulations made under section 30G; or

(c) if the EPA is satisfied that an account holder no longer requires a holding account, make a written submission to the EPA, before the account is closed, regarding the account holder's need to retain the account.

(7) The Registrar must give effect to any directions given by the EPA under subsection (2) in accordance with, and subject to, the procedures set out in this subpart and any regulations made under section 30G.

Section 18B: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18B(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(6): substituted, on 26 September 2008, by section 18(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(6)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(7): added, on 8 December 2009, by section 12 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18B(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 18C Transfer of units

(1) An account holder may, by using the form and paying the fees (if any) prescribed in regulations made under this Act, apply to the Registrar to transfer units from that account holder's holding account to another account in—

(a) the unit register; or

(b) an overseas registry.

(2) The Registrar must transfer the specified units as requested, subject to any regulations made under this Act.

(3) Despite subsection (2), if the Registrar is asked to transfer Kyoto units held in an account holder's holding account to a retirement account, the Registrar must—

(a) seek a direction from the Minister of Finance as to whether the units may be transferred to a retirement account; and

(b) transfer the units to a retirement account if the Minister of Finance so directs.

(4) An account holder who receives units is under no obligation to initiate any registration process.

Section 18C: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18C(3): amended, on 26 September 2008, by section 19(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3): amended, on 26 September 2008, by section 19(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3)(a): amended, on 26 September 2008, by section 19(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3)(b): amended, on 26 September 2008, by section 19(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18CA Effect of surrender, retirement, cancellation, and conversion

(1) A unit that is transferred to a cancellation account may not be further transferred, retired, surrendered, carried-over, or cancelled.

(2) A Kyoto unit that is transferred to a retirement account may not be further transferred, retired, surrendered, carried-over, or cancelled.

(3) A Kyoto unit that is transferred to a surrender account may only be further transferred, in accordance with—

(a) a direction from the Minister of Finance, to—

(i) a retirement account or a cancellation account; or

(ii) a Crown holding account under section 7(1)(db); or

(b) a direction of the EPA given under section 124, to a participant's holding account.

(4) A New Zealand unit or an approved overseas unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the EPA given under section 124.

(5) A New Zealand unit that is transferred to a conversion account may not be surrendered, cancelled, or otherwise further transferred except as required by section 30E(4)(b).

Section 18CA: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18CA(3): substituted, on 8 December 2009, by section 13 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18CA(3)(a): replaced, on 1 January 2013, by section 12 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 18CA(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18CA(4): substituted, on 8 December 2009, by section 13 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18CA(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 18CB Restriction on surrender of assigned amount units

(1) No participant may surrender, or permit to be surrendered, an imported assigned amount unit to meet the participant's obligations under section 63 unless the assigned amount unit meets the conditions or requirements prescribed in regulations made under this Part.

(2) In this section and section 18CD, **imported assigned amount unit** means an assigned amount unit that is issued out of the initial assigned amount of a Party other than New Zealand.

Section 18CB: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18CC Restriction on surrender of assigned amount units issued during first commitment period

(1) No participant may surrender, or permit to be surrendered, a CP1 imported assigned amount unit to meet the participant's obligations under section 63 in respect of any emissions from any activities listed in Schedule 3 or 4 carried out by the participant after 31 December 2012.

(2) In this section and sections 18CD and 19, **CP1 imported assigned amount unit** means an assigned amount unit that is issued out of the initial assigned amount of a Party, other than New Zealand, during the first commitment period.

Section 18CC: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18CD Effect of surrendering restricted assigned amount units

(1) This section applies if at any time the Registrar discovers that—

(a) an imported assigned amount unit has been transferred to a surrender account that does not meet any of the conditions or requirements prescribed in regulations made under this Part; or

(b) a CP1 imported assigned amount unit has been transferred to a surrender account to meet a participant's obligations under section 63 in respect of any emissions from any activities listed in Schedule 3 or 4 carried out by the participant after 31 December 2012.

(2) If this section applies, the Registrar must—

(a) reverse the transfer; and

(b) notify the participant and the EPA that the transfer has been reversed.

(3) If a transfer is reversed under subsection (2),—

(a) the EPA must treat the transfer as never taking place for the purpose of assessing whether a participant has surrendered the required number of units by the due date as required under any section of this Act; and

(b) if the EPA considers that the person has not surrendered the required number of units by the due date, give a notice to the participant under section 134(3)(a).

Section 18CD: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18CD(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18CD(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18CD(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 18D Succession

(1) This section applies if an account holder—

(a) is a natural person and dies; or

(b) is not a natural person and is wound up, liquidated, dissolved, or otherwise ceases to exist.

(2) If this section applies, the person listed on the holding account as the account holder's representative may operate the holding account until—

(a) a successor is determined; and

(b) the Registrar is informed of that determination in writing.

(3) If a successor is determined, and the Registrar is informed of that determination in writing, the Registrar must register the successor as the account holder.

Section 18D: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 18E Trusts, representatives, and assignees of bankrupts

(1) Notice of a trust, whether express, implied, or constructive, may not be entered on the unit register except in accordance with subsection (1A).

(1A) If the trustees of a trust apply to open a holding account under section 18A, then—

(a) the trustees may specify the name of the trust as the name of the holding account; and

(b) the Registrar may enter on the unit register the name of the trust as the name of the holding account.

(2) Despite anything in section 18D, the existence of a representative that may operate the holding account of an account holder who has died, or that has been wound up, liquidated, or dissolved, or otherwise has ceased to exist, does not constitute notice of a trust.

(3) The assignee of the property of a bankrupt may be entered on the unit register as the assignee of the bankrupt's units.

Section 18E: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18E(1): substituted, on 8 December 2009, by section 14 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18E(1A): inserted, on 8 December 2009, by section 14 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 19 Retirement of Kyoto units by the Crown

(1) The Crown may offset each tonne of carbon dioxide equivalent of human-induced greenhouse gas emissions, emitted from sources listed in Annex A of the Protocol, by transferring a Kyoto unit to the retirement account.

(2) Despite subsection (1), the Crown may not retire a CP1 imported assigned amount unit to offset any carbon dioxide equivalent of human-induced greenhouse gas emissions that are emitted after 31 December 2012 from sources listed in Annex A of the Protocol.

(3) New Zealand units and approved overseas units may not be retired.

Section 19: substituted, on 26 September 2008, by section 21 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 20 Transactions must be registered

(1) A transaction to issue, transfer, cancel, retire, surrender, convert, or replace units must be registered on the unit register.

(2) However, the Registrar may not register a transaction on the unit register if—

(a) the Registrar receives a notification from the international transaction log that there is a discrepancy with the transaction; or

(b) the transaction is not submitted in the prescribed form; or

(c) the prescribed fees (if any) have not been paid to the Registrar (unless arrangements for payment have been made in accordance with regulations made under this Act).

Section 20(1): amended, on 26 September 2008, by section 22(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 20(1): amended, on 19 November 2007, by section 15(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2): substituted, on 19 November 2007, by section 15(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2)(a): amended, on 26 September 2008, by section 22(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 21 Registration procedure for Kyoto units

(1) On receipt of a direction in relation to Kyoto units given by the Minister authorised to give the direction under a provision of this Act or the EPA, or an application for the registration of a transaction in relation to Kyoto units by an account holder that is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—

(a) create a unique transaction number; and

(b) if the proposed transaction concerns the international transaction log, send a record of the proposed transaction to the international transaction log if required to do so by the international transaction log; and

(c) if the proposed transaction does not concern the international transaction log,—

(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

(ii) send electronic notification that the transaction has been recorded in the unit register to,—

(A) in the case of a direction, the Minister or the EPA who gave the direction and, if the direction specifies that Kyoto units are to be transferred to a holding account of an account holder other than the Crown, the account holder:

(B) in the case of an application, the account holder who submitted the application and the account holder specified in the application as the account holder to whose holding account Kyoto units are to be transferred.

(2) If the Registrar sends a record of the proposed transaction to the international transaction log under subsection (1)(b) and receives notification back from the international transaction log that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

(b) send notification that the transaction has been recorded in the unit register to the international transaction log; and

(c) send electronic notification that the transaction has been recorded in the unit register to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

(3) If the Registrar receives a notification from the international transaction log that there is a discrepancy in a transaction in relation to Kyoto units, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(c) must give notification of the termination, as soon as practicable, to the international transaction log; and

(d) send electronic notification that the transaction has been terminated to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

(4) This section does not apply to the carry-over of assigned amount units, certified emission reduction units, and emission reduction units.

Section 21 heading: amended, on 26 September 2008, by section 23(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1): substituted, on 19 November 2007, by section 16(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21(1): amended, on 26 September 2008, by section 23(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1): amended, on 26 September 2008, by section 23(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1)(a): amended, on 8 December 2009, by section 15(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21(1)(b): substituted, on 26 September 2008, by section 23(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1)(c): added, on 26 September 2008, by section 23(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1)(c)(ii)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21(1)(c)(ii)(A): amended, on 8 December 2009, by section 15(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21(2): substituted, on 26 September 2008, by section 23(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(2)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21(2)(c)(i): amended, on 8 December 2009, by section 15(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21(3): amended, on 26 September 2008, by section 23(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3): amended, on 26 September 2008, by section 23(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3)(c): substituted, on 26 September 2008, by section 23(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3)(d): added, on 26 September 2008, by section 23(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3)(d)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21(3)(d)(i): amended, on 8 December 2009, by section 15(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21(4): amended, on 26 September 2008, by section 23(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 21AA Registration procedure for New Zealand units and approved overseas units

(1) On receipt of a direction in relation to New Zealand units or approved overseas units given by a Minister authorised to give the direction under a provision of this Act or the EPA, or an application for the registration of a transaction in relation to New Zealand units or approved overseas units by an account holder, which is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—

(a) create a unique transaction number; and

(b) if the proposed transaction concerns an overseas registry, send a record of the proposed transaction to the overseas registry if required to do so by the overseas registry; and

(c) if the proposed transaction does not concern an overseas registry,—

(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

(ii) send electronic notification that the transaction has been recorded in the unit register to,—

(A) in the case of a direction, the Minister or the EPA who gave the direction and, if the direction specifies that New Zealand units or approved overseas units are to be transferred to the holding account of an account holder other than the Crown, the account holder:

(B) in the case of an application, the account holder who submitted the application and the account holder specified in the application as the account holder to whose holding account New Zealand units or approved overseas units are to be transferred.

(2) If the Registrar sends a record of the proposed transaction to an overseas registry under subsection (1)(b) and receives notification back from the overseas registry that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

(b) send notification to the overseas registry that the transaction has been recorded in the unit register; and

(c) send electronic notification that the transaction has been recorded in the unit register to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

(3) If the Registrar receives a notification from the overseas registry that there is a discrepancy in a proposed transaction in relation to New Zealand units or approved overseas units, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(c) must notify the overseas registry of the termination; and

(d) send electronic notification that the transaction has been terminated to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

Section 21AA: inserted, on 26 September 2008, by section 24 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21AA(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(1)(c)(ii)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(1)(c)(ii)(A): amended, on 8 December 2009, by section 16(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21AA(2)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(2)(c)(i): amended, on 8 December 2009, by section 16(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21AA(3)(d)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(3)(d)(i): amended, on 8 December 2009, by section 16(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 21A Electronic registration

A direction to the Registrar by the Minister or the EPA under a provision of this Act or an application by an account holder to register a transaction must be—

(a) made electronically in the prescribed form via the Registry's Internet site, and contain the particulars specified in the form; and

(b) accompanied by the fee (if any) prescribed in regulations made under this Act; and

(c) made in accordance with regulations made under this Act.

Section 21A: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21A: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21A: amended, on 8 December 2009, by section 17 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 21B Defective applications

(1) If an application is defective, the Registrar may—

(a) *[Repealed]*

(b) direct, in writing by electronic notification, the applicant to correct the defect within a specified period of time.

(2) If a direction to correct a defect is not complied with within the specified period of time, the Registrar may refuse to—

(a) proceed with the registration; or

(b) register the transaction.

(3) Any fees paid to the Registrar in relation to an uncorrected defective application are forfeited.

Section 21B: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21B(1)(a): repealed, on 26 September 2008, by section 25 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 22 Transactions take effect when registered

(1) A transaction takes effect when it is registered.

(2) A transaction is registered when the Registrar—

(a) assigns a registration number, date, and time, and other information that may be required by this Act, to the transaction; and

(b) enters those particulars in the unit register.

### 23 Receiving Kyoto units from overseas registries

(1) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry, the Registrar must register the transaction.

(a) *[Repealed]*

(b) *[Repealed]*

(2) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry and receives notification from the international transaction log that there is a discrepancy, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(c) must notify the international transaction log of the termination.

(3) A transfer of Kyoto units from an overseas registry is subject to any regulations made under this Act.

(4) Subsection (1) is subject to subsection (2).

Section 23 heading: amended, on 26 September 2008, by section 26(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(1): amended, on 1 January 2013, by section 13(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 23(1): amended, on 26 September 2008, by section 26(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(1)(a): repealed, on 1 January 2013, by section 13(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 23(1)(b): repealed, on 19 November 2007, by section 18(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(2): amended, on 26 September 2008, by section 26(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2): amended, on 26 September 2008, by section 26(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2)(c): amended, on 26 September 2008, by section 26(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2)(c): amended, on 19 November 2007, by section 18(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(3): added, on 19 November 2007, by section 18(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(3): amended, on 26 September 2008, by section 26(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(4): inserted, on 1 January 2013, by section 13(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 23A Receiving New Zealand units and approved overseas units from overseas registries

(1) If the Registrar receives notification from an overseas registry of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is no discrepancy with the transaction, the Registrar must register the transaction in accordance with the notification.

(2) If the Registrar receives notification from an overseas registry of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is a discrepancy with the transaction, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(c) must notify the overseas registry of the termination.

(3) A transfer of New Zealand units or approved overseas units from an overseas registry is subject to any regulations made under this Act.

Section 23A: inserted, on 26 September 2008, by section 27 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 24 Priority of registration

(1) A direction given to the Registrar by the Minister or the EPA under a provision of this Act or an application for the registration of a transaction by an account holder must, as soon as practicable, be processed in the chronological order in which it is received by the Registrar.

(2) A direction or an application is received by the Registrar when it is recorded as being downloaded into the computer maintained to operate the unit register.

(3) Subsection (1) applies to an application for the registration of a transaction only if the application is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act.

Section 24(1): substituted, on 26 September 2008, by section 28(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 24(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 24(1): amended, on 8 December 2009, by section 18 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 24(2): amended, on 19 November 2007, by section 19(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 24(3): added, on 26 September 2008, by section 28(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 25 Correction of unit register

(1) If the unit register records a transaction inaccurately, and the inaccuracy is the result of an error or omission made by the Registrar when registering the transaction, then a request to correct the inaccuracy may be submitted by—

(a) the Minister or the EPA who gave the direction, if the Registrar registered the transaction following receipt of a direction from the Minister or the EPA; or

(b) the account holder who applied to register the transaction.

(2) The request—

(a) may be made at any time; and

(b) must specify—

(i) the inaccuracy; and

(ii) the correction required; and

(c) must be in the form, and accompanied by the fees (if any), prescribed in regulations made under this Act.

(3) If the Registrar is satisfied that the unit register is inaccurate in any respect, the Registrar may—

(a) correct the unit register accordingly; and

(b) record on the unit register—

(i) the nature of the correction; and

(ii) the time that the correction was made; and

(c) give notification of the correction, as soon as practicable, to—

(i) any person whom the Registrar considers to be affected by the correction; and

(ii) the international transaction log (if required to do so); and

(iii) an overseas registry (if required to do so).

Section 25: substituted, on 19 November 2007, by section 20 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 25(1): substituted, on 26 September 2008, by section 29(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(1)(a): substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 25(3): amended, on 26 September 2008, by section 29(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3)(c)(ii): substituted, on 26 September 2008, by section 29(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3)(c)(iii): substituted, on 26 September 2008, by section 29(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 26 Unit register must be open for search

(1) Except as provided in section 13, the unit register must be open at all times for searches by a person via the Registry's Internet site.

(2) The Registrar is not required to make publicly available any information that is not listed in section 27.

Section 26(1): amended, on 19 November 2007, by section 21 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 26(2): added, on 26 September 2008, by section 30 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 27 Information accessible by search

(1) The following information must be accessible by a search of the unit register:

(a) the following up-to-date information for each account:

(i) the name of the account holder; and

(ii) the type of account; and

(iii) the account number; and

(iv) the full name, mailing address, telephone number, fax number, and email address of any primary representatives of the account holder; and

(b) a list of account holders; and

(c) the relevant commitment period of any—

(i) general cancellation account or retirement account; and

(ii) long-term certified emission reduction replacement account or temporary certified emission reduction replacement account; and

(d) any other information prescribed in regulations made under this Part.

(2) The following information must be made accessible by a search of the unit register, and be available by 31 January in each year, in a form that shows the relevant totals at the end of the previous year:

(a) the total holdings of Kyoto units in the Registry; and

(b) the total holdings of assigned amount units, emission reduction units, certified emission reduction units, long-term certified emission reduction units, temporary certified emission reduction units, and removal units in the Registry; and

(c) the total quantity of New Zealand units issued during that year under section 68 or 178B; and

(d) the total quantity of New Zealand units transferred for each removal activity during that year; and

(e) the total holdings of New Zealand units in the Registry; and

(f) the total holdings of approved overseas units in the Registry; and

(g) the total holdings of each type of approved overseas units in the Registry; and

(h) the total quantity of assigned amount units issued on the basis of New Zealand's initial assigned amount during that year; and

(i) the total quantity of emission reduction units issued on the basis of a joint implementation project during that year; and

(j) the following information in relation to units transferred to the Registry from overseas registries during that year:

(i) the total quantity of units transferred; and

(ii) the total quantity of each type of unit transferred; and

(iii) the identity of the transferring overseas registries, including the total quantity of—

(A) units transferred from each overseas registry; and

(B) each type of unit transferred from each overseas registry; and

(k) the following information in relation to units transferred from the Registry to overseas registries during that year:

(i) the total quantity of units transferred; and

(ii) the total quantity of each type of unit transferred; and

(iii) the identity of the acquiring overseas registries, including the total quantity of—

(A) units transferred to each overseas registry; and

(B) each type of unit transferred to each overseas registry; and

(l) the total quantity of units transferred between holding accounts in the Registry during that year; and

(m) the total quantity of each type of unit transferred between holding accounts in the Registry during that year; and

(n) the total quantity of removal units issued in relation to sink activities during that year; and

(o) the total quantity of Kyoto units transferred to the sink cancellation account during that year; and

(p) the total quantity of Kyoto units transferred to the non-compliance cancellation account during that year; and

(q) the total quantity of units transferred to the general cancellation account during that year; and

(r) the total quantity of Kyoto units retired during that year; and

(s) the total quantity of units surrendered during that year; and

(t) the total quantity of each type of unit surrendered during that year; and

(u) the following information in relation to New Zealand units transferred to the conversion account during that year:

(i) the total quantity of New Zealand units converted; and

(ii) the total quantity of New Zealand units converted for the purpose of transferring designated assigned amount units to—

(A) an account in an overseas registry; or

(B) the general cancellation account; and

(v) the total quantity of assigned amount units, certified emission reduction units, and emission reduction units carried-over from a previous commitment period during that year; and

(w) the expiry date of each long-term certified emission reduction unit and each temporary certified emission reduction unit held in the Registry.

(3) The following information must be accessible by a search of the unit register in a form that shows the relevant totals at the beginning of the previous year:

(a) the total holdings of Kyoto units in each holding account in the Registry (including any holding account held by the Crown); and

(b) the total holdings of assigned amount units, emission reduction units, certified emission reduction units, long-term certified emission reduction units, temporary certified emission reduction units, and removal units in each holding account in the Registry (including any holding account held by the Crown).

Section 27: substituted, on 26 September 2008, by section 31 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 27(2)(c): replaced, on 1 January 2013, by section 14 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 28 Search of unit register

A person may, by using the form and paying the fees (if any) prescribed by regulations made under this Act, search the unit register, and obtain a printed search result, in accordance with this Act and any regulations made under this Act.

Section 28: substituted, on 14 November 2006, by section 23 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 29 Printed search result receivable as evidence

A printed search result, or a copy of a printed search result, that purports to be issued by the Registrar is receivable as evidence and is, in the absence of evidence to the contrary, proof of any matter recorded in the unit register, including (but not limited to)—

(a) the ownership of units; and

(b) the date and time of the registration of a transaction; and

(c) information that the Registry holds.

Section 29: substituted, on 14 November 2006, by section 23 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 30 Recovery of fees

(1) A fee that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fees by the EPA in any court of competent jurisdiction.

(2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees that are payable.

Section 30(1): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 30(1): amended, on 26 September 2008, by section 32(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 30(2): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 30A The Crown or Registrar not liable in relation to searches in certain cases

No action may be brought against the Crown or the Registrar for any loss or damage resulting from—

(a) an inaccuracy in a search of the unit register; or

(b) an inaccurate entry or omission in the unit register if the inaccuracy or omission arises from reasonable reliance on information received by the Registrar from—

(i) the international transaction log; or

(ia) an overseas registry; or

(ib) a third party; or

(ii) an account holder.

Section 30A: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 30A heading: amended, on 26 September 2008, by section 33(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(i): amended, on 26 September 2008, by section 33(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(ia): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(ib): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Expiry of long-term certified emission reduction units and temporary certified emission reduction units*

Heading: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 30B Expiry of long-term certified emission reduction units

(1) A long-term certified emission reduction unit expires at the end of the last crediting period for the clean development mechanism project to which it relates.

(2) A person who holds a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account must replace that unit before it expires by transferring one of the following units to the long-term certified emission reduction replacement account:

(a) an assigned amount unit; or

(b) a certified emission reduction unit; or

(c) an emission reduction unit; or

(d) a removal unit.

(3) Thirty days before a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

(4) If a long-term certified emission reduction unit is not held in a retirement account or a long-term certified emission reduction replacement account, the

Registrar must transfer that unit to the general cancellation account when that unit expires.

(5) If subsection (4) applies, then section 18C(3) does not apply.

Section 30B: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 30C Replacement of certain long-term certified emission reduction units

(1) A person who holds a long-term certified emission reduction unit must replace that unit in accordance with this section if the designated operating entity of the relevant clean development mechanism project—

(a) provides a certification report that indicates a reversal of net anthropogenic greenhouse gas removals by sinks since the previous certification; or

(b) does not provide a certification report.

(2) If subsection (1) applies,—

(a) each identified long-term certified emission reduction unit, as notified by the executive board, must be replaced by one of the following units:

(i) assigned amount units; or

(ii) certified emission reduction units; or

(iii) emission reduction units; or

(iv) removal units; or

(v) long-term certified emission reduction units from the same clean development mechanism project; and

(b) the Registrar must notify in writing the person who holds the affected long-term certified emission reduction unit.

(3) A person notified under subsection (2)(b) must replace the affected long-term certified emission reduction unit within 30 days of receiving the notice.

(4) Sections 354 to 361 of the Property Law Act 2007 apply, with all necessary modifications, to any notice required under subsection (2)(b).

Section 30C: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 30C(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### 30D Expiry of temporary certified emission reduction units

(1) A temporary certified emission reduction unit expires at the end of the subsequent commitment period that immediately follows the relevant commitment period.

(2) A person who holds a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account

must replace that unit before it expires by transferring one of the following units to the temporary certified emission reduction replacement account:

(a) an assigned amount unit; or

(b) a certified emission reduction unit; or

(c) an emission reduction unit; or

(d) a removal unit; or

(e) a temporary certified emission reduction unit that is due to expire in a subsequent commitment period.

(3) Thirty days before a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

(4) If a temporary certified emission reduction unit is not held in a retirement account or a temporary certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

(5) If subsection (4) applies, then section 18C(3) does not apply.

Section 30D: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

*Miscellaneous provisions*

Heading: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 30E Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation

(1) An account holder may apply to the Registrar to convert a New Zealand unit held by that person into a designated assigned amount unit held for the purposes of transferring that assigned amount unit to—

(a) an account in an overseas registry; or

(b) the general cancellation account.

(2) An account holder who applies to convert any New Zealand units into designated assigned amount units for either purpose specified in subsection (1) must—

(a) submit the prescribed form to the Registrar specifying the New Zealand units that the account holder wishes to convert; and

(b) submit an application under section 18C for the transfer of an equivalent number of designated assigned amount units (into which the account holder is converting the New Zealand units) to—

(i) an account in an overseas registry; or

(ii) the general cancellation account; and

(c) pay the prescribed fee (if any).

(3) Upon receipt of an application under subsection (2) the Registrar must, as soon as practicable,—

(a) transfer the New Zealand units specified in the application from the account holder's account to the conversion account; and

(b) transfer to the account holder's account an equivalent number of designated assigned amount units; and

(c) subject to section 21(3), register the transaction applied for under subsection (2)(b).

(3A) The Registrar's obligations under subsection (3) apply only if, and to the extent that, there are sufficient designated assigned amount units to meet a request under subsection (2) to convert New Zealand units.

(4) If the Registrar receives notification from the international transaction log under section 21(3) that there are discrepancies in the transaction relating to the application submitted under subsection (2)(b), the Registrar must—

(a) comply with section 21(3); and

(b) reverse the transfers in subsection (3)(a) and (b).

(5) For the purposes of this section, **designated assigned amount unit** means an assigned amount unit that—

(a) was issued by the Registrar on the basis of New Zealand's initial assigned amount; and

(b) is held by the Crown in a Crown holding account.

Section 30E: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30E(3A): inserted, on 1 January 2013, by section 15 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 30F Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land

(1) This section applies to any New Zealand units transferred or to be transferred after 31 December 2012 in accordance with the pre-1990 forest land allocation plan issued under section 70.

(2) *[Repealed]*

(3) If the activity listed in Part 1 of Schedule 3 is repealed, the Minister of Finance may issue a direction to the Registrar under section 7 to transfer from any holding account to a cancellation account any New Zealand units to which this section applies.

Section 30F: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30F(1): substituted, on 8 December 2009, by section 20 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 30F(2): repealed, on 8 December 2009, by section 20 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 30G Regulations relating to Part 2

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:

(a) prescribing procedures and requirements relating to any powers of the Minister of Finance under subpart 1 of this Part:

(b) prescribing matters, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, or prohibitions, in respect of—

(i) the transfer of units, including (but not limited to)—

(A) the transfer of units from an account holder's holding account to an account in an overseas registry:

(B) the transfer of units within the unit register:

(C) the transfer of units from an overseas registry:

(D) prohibitions on the transfer of units for the purposes of holding those units in an account in the Registry:

(ii) the opening or closing of holding accounts:

(c) prescribing matters in respect of the holding, surrender, conversion, and cancellation of units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

(d) prescribing matters in respect of the carry-over of assigned amount units, certified emission reduction units, and emission reduction units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

(e) prescribing procedures, requirements, and other matters in respect of the unit register and its operation, including, but not limited to, matters relating to—

(i) access to the unit register:

(ii) the location of the unit register:

(iii) the hours of access to the unit register:

(iv) the format of unique numbers to be used in the unit register:

(v) the allocation of unique serial numbers to New Zealand units and approved overseas units:

(vi) the exchange of data between—

(A) the Registry and overseas registries:

(B) the Registry and the international transaction log:

(vii) the registration of transactions:

(viii) the form and content of the unit register:

(f) prescribing matters in respect of which fees are payable under this Part, the amounts of those fees, and the procedures for payment:

(g) prescribing procedures, requirements, and other matters in respect of the form, use, and manner of obtaining electronic verification statements to confirm a registration:

(h) prescribing procedures, requirements, and other matters in respect of searching the unit register, including, but not limited to,—

(i) the criteria by which a search may be conducted:

(ii) the method of disclosure:

(iii) the form of search results:

(iv) the abbreviations, expansions, or symbols that may be used in search results:

(i) prescribing forms and notices for the purposes of this Part:

(j) prescribing, for the purpose of the definition of overseas registry, overseas registries from which and to which units may be transferred to and from accounts in the Registry:

(k) prescribing the units issued by an overseas registry that may be transferred to accounts in the Registry:

(l) prescribing procedures for transactions involving approved overseas units:

(m) prescribing matters in respect of the taking of possession of an emissions unit for the purposes of section 18(1A)(b) of the Personal Property Securities Act 1999:

(n) in respect of this Part, giving effect to the terms of the Convention and the Protocol, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

(o) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration:

(p) prescribing matters relating to the powers of the Minister under section 6A to sell New Zealand units by auction, including—

(i) prescribing the date on which the sale of New Zealand units by auction commences:

(ii) providing for a pilot auction to be conducted in advance of the date from which sale by auction is to commence:

(iii) prescribing the persons or classes of persons eligible to participate in an auction of New Zealand units:

(iv) prescribing penalties for breaches of regulations made under this paragraph:

(v) prescribing an overall limit in the manner provided for by section 30GA(1):

(vi) providing for any other matters for the conduct of an auction that the Minister considers relevant to the effective conduct of the auction:

(q) enabling the Minister to specify 1 or more types of Kyoto unit into which an account holder may apply to convert a New Zealand unit under section 30E, if assigned amount units are not available in a Crown holding account.

(2) Regulations made under subsection (1) may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.

(3) Any regulation made under subsection (1)(b)(i) or (c) does not apply to the transfer of units that are held in an account in the Registry at the time that the regulation comes into force.

(3A) The amount of fees set under regulations made under subsection (1)(f) must not exceed the amount necessary to enable the recovery of the direct and indirect costs of the Registrar in performing his or her functions under this Part.

(4) Any regulations made under subsection (1) must be consistent with the Convention and the Protocol.

Section 30G: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30G(1)(p): inserted, on 1 January 2013, by section 16 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 30G(1)(q): inserted, on 1 January 2013, by section 16 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 30G(3A): inserted, on 5 December 2011, by section 9 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 30GA Further provisions governing regulations made under section 30G(1)(p)

(1) If regulations are made under section 30G(1)(p),—

(a) the Minister must recommend to the Governor-General that those regulations prescribe the overall limit on the number of New Zealand units that may, in any year for a period of 5 years from the date prescribed in the regulations,—

(i) be allocated; and

(ii) be sold by auction; and

(iii) be provided under a negotiated greenhouse agreement; and

(b) the Minister must, on an annual basis, make a recommendation to the Governor-General that regulations be made that extend the application of the regulations for a further year.

(2) Before the Minister makes a recommendation to the Governor-General under subsection (1), the Minister must have regard to—

(a) the matters set out in section 68(2)(b)(i) to (iii) (with any necessary modifications); and

(b) New Zealand's projected emission trends; and

(c) any domestic target to reduce emissions; and

(d) the number of New Zealand units that are expected to be allocated; and

(e) the emissions to which the greenhouse gas emissions trading scheme applies; and

(f) the arrangements that govern the operation of the greenhouse gas emissions trading scheme; and

(g) the limit, if any, on the number of units that are not New Zealand units that a participant may surrender; and

(h) any other matters that the Minister considers relevant.

(3) Before making a recommendation under subsection (1)(a) to amend any regulations that prescribe the overall limit, the Minister must give notice in the *Gazette* of any proposal to amend the regulations not later than the date that is 1 year before the date when the amended regulations take effect.

(4) Any change to the overall limit prescribed by regulations made under section 30G(1)(p)(v) must not take effect in the same year as notice of that change is given under subsection (3).

(5) In prescribing an overall limit on the number of New Zealand units available, the regulations made under section 30G(1)(p)—

(a) must not prevent the number of New Zealand units that may be allocated from exceeding the prescribed overall limit; but

(b) must provide that no New Zealand units may be auctioned if the prescribed overall limit on the number of New Zealand units available is exceeded.

(6) In subsections (1)(a)(i) and (5)(a), the reference to New Zealand units allocated does not include—

(a) New Zealand units transferred in accordance with a determination of the Minister under section 77 or 78 that relates to an allocation under the pre-1990 forest land allocation plan; or

(b) any requirement for an additional allocation in the circumstances described in section 86C(5)(b).

(7) To avoid doubt, subsections (3) and (4) do not apply to regulations to which subsection (1)(b) applies.

Section 30GA: inserted, on 1 January 2013, by section 17 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 30GB Further provisions governing regulations made under section 30G(1)(q)

(1) This section applies if regulations made under section 30G(1)(q) specify that a New Zealand unit may be converted into a type of Kyoto unit other than a designated assigned amount unit.

(2) The provisions of section 30E apply to a conversion to the type of Kyoto unit specified under those regulations as if a reference to a designated assigned amount unit or an assigned amount unit in that section were a reference to the type of Kyoto unit specified in the regulations.

(3) A reference to a designated assigned amount unit or an assigned amount unit in sections 27(2)(u)(ii) and 178C(1) must be read as a reference to the type of Kyoto unit specified in the regulations.

(4) Despite subsection (2), section 30E(5)(a) does not apply if this section applies.

Section 30GB: inserted, on 1 January 2013, by section 17 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 30H Procedure for certain regulations relating to units

(1) Before making a recommendation under section 30G(1) relating to regulations under section 30G(1)(b)(i), (c), (d), (j), (k), (p), or (q), the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must, to the extent practicable in the circumstances, include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(3) Unless subsection (4) applies or a later date is specified in the regulations, regulations referred to in this section, except regulations made under section 30G(1)(q), come into force 3 months after the date of their notification in the *Gazette*.

(4) Subsections (1) and (3) do not apply in respect of any regulations if the Minister considers it is in the national interest that they be made urgently.

(5) A failure to comply with this section does not affect the validity of regulations made under section 30G(1)(b)(i), (c), (d), (j), (k), (p), or (q).

Section 30H: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30H(1): amended, on 1 January 2013, by section 18(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 30H(3): amended, on 1 January 2013, by section 18(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 30H(5): amended, on 1 January 2013, by section 18(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 30I Incorporation by reference in regulations made under section 30G

(1) The following written material may be incorporated by reference in regulations made under section 30G:

(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol; and

(b) any standards, requirements, or recommended practices—

(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

(4) Sections 170 to 177 apply to material incorporated by reference into regulations under section 30G as though all references to sections 163 to 165, 167, and 168 were references to section 30G and all references to the chief executive were references to the Registrar.

Section 30I: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30I(1)(b)(ii): amended, on 1 January 2013, by section 19 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 30J Signing false declaration with respect to regulations made under section 30G

Every person who signs a declaration that is required under regulations made under section 30G, knowing the declaration to be false,—

(a) commits an offence; and

(b) is liable on conviction to a fine not exceeding $5,000.

Section 30J: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 30K Providing false or misleading information to Registrar

(1) Every person who knowingly provides false or misleading information to the Registrar commits an offence and is liable on conviction to a fine not exceeding,—

(a) in the case of an individual, $50,000:

(b) in the case of a body corporate, $200,000.

(2) Every person who recklessly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding $2,000.

Section 30K: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Part 3
## Inventory agency

Part 3 heading: inserted, on 26 September 2008, by section 35 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 31 Meaning of greenhouse gas

For the purposes of this subpart, despite anything in section 4, **greenhouse gas** means a gas in the earth's atmosphere that strongly absorbs and re-emits infrared radiation, and includes indirect greenhouse gases, but does not include a gas that is covered by the Montreal Protocol on Substances that Deplete the Ozone Layer.

### 32 Primary functions of inventory agency

(1) The primary functions of the inventory agency are to—

(a) estimate annually New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases; and

(b) prepare the following reports for the purpose of discharging New Zealand's obligations:

(i) New Zealand's annual inventory report under Articles 4 and 12 of the Convention and Article 7.1 of the Protocol, including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled; and

(ii) New Zealand's national communication (or periodic report) under Article 7.2 of the Protocol and Article 12 of the Convention; and

(iii) New Zealand's report for the calculation of its initial assigned amount under Article 7.4 of the Protocol, including its method of calculation.

(2) In carrying out its functions, the inventory agency must—

(a) identify source categories; and

(b) collect data by means of—

(i) voluntary collection; and

(ii) collection from government agencies and other agencies that hold relevant information; and

(iii) collection in accordance with regulations made under this Part (if any); and

(c) estimate the emissions and removals by sinks for each source category; and

(d) undertake assessments on uncertainties; and

(e) undertake procedures to verify the data; and

(f) retain information and documents to show how the estimates were determined.

Section 32(1)(b)(i): amended, on 1 January 2013, by section 20 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 32(1)(b)(i): amended, on 14 November 2006, by section 25 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 32(2)(b)(iii): amended, on 26 September 2008, by section 36 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 33 Inventory agency under direction of Minister

(1) The inventory agency must comply with any direction from the Minister in relation to the performance of its functions under this Part.

(2) As soon as practicable after giving the direction, the Minister must make a copy of the direction accessible via the inventory agency's Internet site.

Section 33 heading: amended, on 26 September 2008, by section 37(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(2): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(2): amended, on 14 November 2006, by section 26 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### 34 Record keeping

The inventory agency must keep a record of changes that occur from year to year in—

(a) the collection of data; and

(b) the use of methodologies and emission factors.

### 35 Publication

The inventory agency must publish New Zealand's annual inventory report and its national communication (or periodic report) in electronic form by placing the report on a publicly accessible portion of the inventory agency's Internet site.

Section 35: substituted, on 1 August 2003, by section 27 of the Climate Change Response Amendment Act 2006 (2006 No 59).

*Inspectors*

Heading: substituted, on 26 September 2008, by section 38 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 36 Authorisation of inspectors

(1) The Minister may authorise the following persons, provided that they are suitably qualified and trained, to exercise any or all of the powers of, and carry out any or all of the duties of an inspector under this Part:

(a) employees of the inventory agency; or

(b) employees of the Ministry for Primary Industries and employees of any other department of the public service prescribed by regulation; or

(c) employees of New Zealand Forest Research Institute Limited, Landcare Research New Zealand Limited, New Zealand Pastoral Agriculture Research Institute Limited, and employees of any other Crown Research Institute (within the meaning of the Crown Research Institutes Act 1992) prescribed by regulation; or

(d) employees of the EPA.

(2) An authorisation is subject to the terms and conditions that are agreed to by the Minister and the chief executive of the agency that employs the person authorised to be an inspector.

(3) The Minister must supply an inspector with a warrant of authorisation that clearly states the powers and duties of that inspector.

(4) An inspector who exercises, or purports to exercise, a power conferred on that inspector under this Part must carry and be able to produce, if required to do so,—

(a) his or her warrant of authorisation; and

(b) evidence of his or her identity.

(5) An inspector who holds a warrant of authorisation issued under this section must, on the termination of that inspector's authorisation, surrender his or her warrant of authorisation to the Minister.

Section 36(1): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(1): amended, on 26 September 2008, by section 39(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(1)(b): amended, on 1 January 2013, by section 21 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 36(1)(c): amended, on 5 December 2011, by section 10 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 36(1)(d): added, on 5 December 2011, by section 10 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 36(2): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(3): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(4): amended, on 26 September 2008, by section 39(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(5): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 37 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases

(1) For the purposes of collecting information to assist with the estimation of New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases, an inspector may, if authorised in writing by the Minister, enter or re-enter land, or premises where any livestock are likely to be held, excluding any dwellinghouse, at any reasonable time during the ordinary hours of business, to—

(a) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):

(b) take samples of water, air, soil, or organic matter.

(2) To avoid doubt, the authorisation given by the Minister may be for a series of surveys, investigations, tests, measurements, or samples.

(3) Reasonable notice, in writing, must be given to the occupier (if any) of the land or premises to be entered that specifies—

(a) when, and by what means, entry is to be made; and

(b) the purpose for which entry is required; and

(c) that the entry is authorised under this section.

(4) Reasonable effort must be made to give notice under subsection (3) to the owner or owners of the land or premises.

(5) If the owner or owners are not given notice, reasonable effort must be made to identify any wāhi tapu areas and archaeological sites on the land by other means.

(6) An inspector who exercises the power of entry under this section may use any assistance that is reasonably necessary to exercise the power.

(7) A person who provides assistance under subsection (6) may exercise the powers provided to inspectors under subsection (1).

Section 37(1): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 37(2): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 38 Limitation on power of entry under section 37

The Minister may only authorise an inspector to exercise the power of entry under section 37 if satisfied that the information sought—

(a) requires specific technical expertise to collect; and

(b) cannot reasonably be obtained from the occupier or owner of the land or premises.

Section 38: amended, on 26 September 2008, by section 41 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 39 Power of entry for inspection

(1) An inspector authorised in writing by the inventory agency may enter land or premises (excluding any dwellinghouse) at any reasonable time during the ordinary hours of business, for the purpose of inspection, to determine whether or not a person is complying with regulations made under section 50(2)(a), (c), (e), or (f).

(2) During an inspection, an inspector may—

(a) require the production of, inspect, and copy any documents or business records (including electronic documents or records):

(b) take samples of water, air, soil, or organic matter:

(c) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):

(d) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not regulations made under section 50(2)(a), (c), (e), or (f) have been complied with.

(3) An inspector who exercises the power of inspection under this section must give the occupier or owner reasonable notice of the inspector's intention to enter the land or premises unless doing so would defeat the purpose of the entry.

(4) A notice given under subsection (3) must specify—

(a) when entry is to be made; and

(b) the purpose for which the entry is required; and

(c) that the entry is authorised under this section.

(5) An inspector who exercises the power of inspection under this section may be accompanied by any person or persons reasonably necessary to assist him or her with the inspection.

(6) A person who provides assistance under subsection (5) may exercise the powers provided to inspectors under subsection (2)(a) to (c).

(7) Nothing in this section limits the privilege against self-incrimination.

### 40 Applications for warrants

(1) A District Court Judge who, on written application made on oath by an inspector authorised by the inventory agency, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, or dwellinghouse any documents or other records or things (including samples) for which there are reasonable grounds to believe may be evidence of the commission of an offence under section 46 may issue a warrant authorising the entry and search of that land, premises, or dwellinghouse.

(2) Every search warrant must authorise the inspector executing the warrant to—

(a) enter and search the land, premises, or dwellinghouse within 30 working days of the date of the warrant at any time that is reasonable in the circumstances during the ordinary hours of business; and

(b) require the production, inspection, and copying of documents or business records (including electronic documents or records); and

(c) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not the regulations made under section 50(2) have been complied with; and

(d) seize any documents or business records that the inspector has reasonable cause to suspect may be evidence of the commission of an offence under section 46; and

(e) take samples of water, air, soil, or organic matter; and

(f) use any assistance that is reasonably necessary in the circumstances; and

(g) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances.

(3) An inspector may not enter a dwellinghouse unless that inspector is accompanied by a constable.

(4) A person who provides assistance under subsection (2)(f) may exercise the powers provided to inspectors under subsection (2)(a), (b), (d), (e), and (g).

(5) Nothing in this section limits the privilege against self-incrimination.

Section 40(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### 41 Entry of defence areas

Despite anything in sections 37, 39, and 40, an inspector may not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990), except in accordance with a written agreement between the inventory agency and the Chief of Defence Force on the date or dates specified in that agreement.

### 42 Proof of authority must be produced

If powers are exercised under section 37 or section 39 or section 40, an inspector must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection that inspector's—

(a) warrant of authorisation and evidence of his or her identity; and

(b) written authorisation to enter required under section 37 or section 39 or a search warrant required under section 40.

### 43 Notice of entry

(1) If, when powers are exercised under section 37 or section 39 or section 40, the occupier is not present at the time that the written authorisation or search warrant is executed, and notice is not given to the owner or owners under section 37 or section 39, the inspector must, in a prominent place, attach a written notice that shows—

(a) the date and time of the entry or search; and

(b) the purpose of the entry or search; and

(c) the name and phone number of that inspector; and

(d) an address at which enquiries may be made.

(2) If the inspector removes, or has removed, any documents or business records from any land, premises, or dwellinghouse, the inspector must hand to the occupier, or attach in a prominent place, a notice that—

(a) lists all of the items taken; and

(b) states where those items are being held (and, if they are being held in 2 or more places, state which items are being held in which place); and

(c) states the procedure that the person must follow to have those items returned.

### 44 Information obtained under section 39 or section 40 only admissible in proceedings for alleged breach of regulations made under section 50(2)

No document, business record, or other information obtained from a person under section 39 or section 40 is admissible against that person in any criminal

or civil proceedings, other than proceedings for an alleged breach of regulations made under section 50(2).

### 45 Return of items seized

Section 199 of the Summary Proceedings Act 1957 applies, with the necessary modifications, to any property seized or taken by an inspector as if—

(a) references in that section to a constable were references to an inspector; and

(b) the reference in that section to section 198 of that Act were a reference to section 39 or section 40 of this Act.

### 45A Protection of persons acting under authority of this Part

No inspector or person called upon to assist an inspector who does an act or omits to do an act when carrying out a duty, performing a function, or exercising a power conferred on that person by this Part is under any civil or criminal liability in respect of that act or omission unless the person has acted or omitted to act in bad faith or without reasonable cause.

Section 45A: inserted, on 26 September 2008, by section 42 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Offences and penalties*

### 46 Failing to provide required information to inventory agency

Every person who fails, without reasonable excuse, to provide the information to the inventory agency required under regulations made under section 50(2)—

(a) commits an offence; and

(b) is liable on conviction to a fine not exceeding,—

(i) in the case of an individual, $5,000; or

(ii) in the case of a body corporate, $30,000.

### 47 Obstructing, hindering, resisting, or deceiving person exercising power under Part

Every person—

(a) commits an offence who—

(i) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or regulations made under this Part; or

(ii) wilfully interferes with any survey, investigation, test, or measurement carried out by an inspector under this Part; or

(iii) refuses to provide information that an inspector has demanded from that person under section 39(2)(d) or section 40(2)(c), except on the grounds of self-incrimination; and

(b) is liable on conviction to a fine not exceeding,—

(i) in the case of an individual, $5,000; or

(ii) in the case of a body corporate, $30,000.

Section 47 heading: amended, on 26 September 2008, by section 43(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(i): amended, on 26 September 2008, by section 43(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(ii): amended, on 26 September 2008, by section 43(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 48 Signing false declaration in respect of regulations made under section 50

Every person who signs a declaration that is required by regulations made under section 50, knowing the declaration to be false,—

(a) commits an offence; and

(b) is liable on conviction to a fine not exceeding $5,000.

Section 48 heading: amended, on 26 September 2008, by section 44 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 48A Providing false or misleading information to Registrar

*[Repealed]*

Section 48A: repealed, on 26 September 2008, by section 45 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Miscellaneous provisions*

### 49 Reporting

For the purpose of reporting to the Secretariat under the Convention and the Protocol, the Minister may, as and when the Minister thinks fit, direct the inventory agency or the Registrar to provide reports and information to the Minister or directly to the Secretariat.

Section 49: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 50 Regulations

(1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:

(a) *[Repealed]*

(b) prescribing agencies whose employees may act as inspectors under section 36, being—

(i) a Department of the Public Service listed in Schedule 1 of the State Sector Act 1988; or

(ii) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992:

(c) *[Repealed]*

(ca) *[Repealed]*

(d) *[Repealed]*

(e) *[Repealed]*

(f) *[Repealed]*

(g) *[Repealed]*

(h) *[Repealed]*

(i) prescribing forms and notices for the purposes of this Part:

(j) for the purposes of, and subject to, Part 2, giving effect to the terms of the Convention and the Protocol, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

(k) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.

(2) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to keep and provide information to the inventory agency for the purpose of estimating New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases on any or all of the following:

(a) emissions of greenhouse gases into the atmosphere from industrial or trade premises:

(b) volumes of fuel produced, distributed, sold, or used, and the nature of the use of that fuel:

(c) industrial processes, including by-products from industrial processes:

(d) composition of vehicle fleets and use of vehicles, including, but not limited to, distances travelled:

(e) imports and exports of hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:

(f) imports, exports, manufacture, sales, and the nature of the use of products that contain hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:

(fa) the registration of motor vehicles of each class that have air-conditioning systems that contain hydrofluorocarbons or perfluorocarbons:

(g) waste composition and weight, dimensional characteristics of landfills, and volume of landfill gases extracted and combusted:

(h) numbers of ruminants and other farmed livestock and their performance:

(i) areas of crops and amounts produced:

(j) amount of nitrogenous and lime fertilisers used:

(k) native and planted trees, the amount of harvesting, the area of land in scrub, and the area of land in other land uses that are necessary to determine land use change under the Convention or the Protocol.

(3) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to provide to the inventory agency information that the person holds on any matter specified in subsection (2) for any year from 1989 to the current reporting year.

(4) Regulations made under subsection (2) may specify the manner and form in which records must be kept and provided, including specifying that those records must be declared as true, the form of that declaration, and who must sign that declaration.

(5) Regulations made under subsection (1) or (2) may be made in respect of different persons or classes of persons.

(6) For the purposes of subsection (5), **classes of persons** includes local authorities.

(7) Any regulations made under this section must be consistent with—

(a) this Act; and

(b) the Convention; and

(c) the Protocol.

(8) The Governor-General may, by Order in Council, make regulations—

(a) amending Schedule 1 by making any amendments to the text of the Convention set out in that schedule as are required to bring the text up to date:

(b) revoking Schedule 1 and substituting a new schedule setting out in an up-to-date form the text of the Convention:

(c) amending Schedule 2 by making any amendments to the text of the Protocol set out in that schedule as are required to bring the text up to date:

(d) revoking Schedule 2 and substituting a new schedule setting out in an up-to-date form the text of the Protocol.

Section 50(1)(a): repealed, on 26 September 2008, by section 47(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(c): repealed, on 26 September 2008, by section 47(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(ca): repealed, on 26 September 2008, by section 47(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(d): repealed, on 26 September 2008, by section 47(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(e): repealed, on 26 September 2008, by section 47(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(f): repealed, on 26 September 2008, by section 47(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(g): repealed, on 26 September 2008, by section 47(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(h): repealed, on 26 September 2008, by section 47(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(i): amended, on 26 September 2008, by section 47(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(k): amended, on 26 September 2008, by section 47(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(2): amended, on 26 September 2008, by section 47(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(2)(fa): inserted, on 1 January 2013, by section 22(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 50(2)(k): amended, on 1 January 2013, by section 22(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 50(3): amended, on 26 September 2008, by section 47(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(5): substituted, on 26 September 2008, by section 47(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(8): added, on 8 December 2009, by section 21 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 51 Incorporation by reference in regulations made under section 50

(1) The following written material may be incorporated by reference in regulations made under section 50:

(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol; and

(b) any standards, requirements, or recommended practices—

(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

(4) Sections 170 to 177 apply to material incorporated by reference into regulations under section 50 as though all references to sections 163 to 165, 167, and

168 were references to section 50 and all references to the chief executive were references to the inventory agency.

Section 51: substituted, on 26 September 2008, by section 48 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 51(1)(b)(ii): amended, on 1 January 2013, by section 23 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 52 Inventory agency must report to Minister on certain matters before certain regulations are made

(1) Before regulations are made under section 50(2) or (3), the inventory agency must provide a report to the Minister on—

(a) whether or not the information to be collected under the regulations is reasonably available to the inventory agency by other means, including, but not limited to,—

(i) voluntary collection; or

(ii) collection from a government agency that holds the information (provided that the release of the information by that government agency complies with the principles of the Privacy Act 1993 and any provisions of the enactment under which the information was collected); and

(b) any deficiencies with collecting the information using those other means, including, but not limited to,—

(i) deficiencies in obtaining the required quality of information; and

(ii) the lack of certainty that all the required information can be provided; and

(c) whether or not the regulations are likely to place a disproportionate burden on any particular group of persons.

(2) When preparing a report under subsection (1), the inventory agency must consult any person or government agency that is likely to be affected by the proposed regulations.

(3) With respect to a report prepared under subsection (1), the Minister—

(a) must have regard to the report and to the results of consultation; and

(b) may make, as he or she thinks fit, recommendations to the Governor-General to make regulations under section 50(2) or (3).

(4) The Minister may not recommend the making of regulations under section 50(2) and (3) unless he or she is satisfied, on reasonable grounds, that the regulations are necessary to assist New Zealand to meet its obligations under the Convention or the Protocol.

Section 52 heading: amended, on 26 September 2008, by section 49(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(1): amended, on 26 September 2008, by section 49(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(3): amended, on 26 September 2008, by section 49(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(4): amended, on 26 September 2008, by section 49(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 53 Consequential amendments

*Amendment(s) incorporated in the Act(s)*.

# Part 4
# New Zealand greenhouse gas emissions trading scheme

Part 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 1—Participants

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 54 Participants

(1) A person is a **participant**,—

(a) in respect of an activity listed in Schedule 3, if the person—

(i) is required under section 180, 204, or 213 to be treated as the person carrying out the activity; or

(ii) if subparagraph (i) does not apply, carries out the activity; and

(b) in relation to an activity listed in Schedule 4, if the person—

(i) carries out the activity, is registered as a participant under section 57 in respect of the activity, and that registration has taken effect; or

(ii) becomes a participant under section 192 in respect of the activity and is not removed from the register in respect of that activity.

(2) Any reference in this Part or Part 5 to a person or participant carrying out an activity must be read as referring to the person who is to be treated under section 180, 204, or 213 as carrying out the activity, or if those sections do not apply, to the person or participant carrying out the activity.

(3) Subsection (1)(a) is subject to any exemption under an Order in Council made under section 60.

(4) A person who was a participant under subsection (1) continues to be a participant for the purposes of this Act in respect of any obligations (including, but not limited to, the obligation to retain records in accordance with section 67), or entitlements under section 64, arising in respect of an activity listed in Schedule 3 or 4 that the person carried out while a participant.

(5) The EPA must ensure that the registers, or the information contained in the registers, kept for the purposes of section 56 or 57 are open for public inspec-

tion, without fee, on the EPA's Internet site and in any other form the EPA considers appropriate.

Section 54: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 54(1)(a)(i): amended, on 8 December 2009, by section 22(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(1)(b)(ii): amended, on 8 December 2009, by section 22(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(2): amended, on 8 December 2009, by section 22(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(4): amended, on 8 December 2009, by section 22(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(5): substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 55 Associated persons

(1) This section applies if an activity listed in Schedule 3 has a threshold below or above which a person becomes a participant.

(2) If this section applies, persons who are associated persons are to be treated as 1 person for the purpose of determining whether the threshold is met.

(3) If a threshold for an activity listed in Schedule 3 is met by associated persons, each of the associated persons—

(a) is to be treated as carrying out the activity for the purposes of this Act; and

(b) may elect to comply with this Part and Part 5 as a—

(i) participant in relation to the activity; or

(ii) member of an unincorporated body; or

(iii) member of a consolidated group under section 150, if the associated person qualifies to be a member of a consolidated group.

Section 55: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 55(3)(b)(ii): substituted, on 8 December 2009, by section 23(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 55(3)(b)(iii): amended, on 8 December 2009, by section 23(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 56 Registration as participant in respect of activities listed in Schedule 3

(1) A person who carries out an activity listed in Schedule 3 must—

(a) notify the EPA that the person is a participant in respect of the activity; and

(b) if the person does not already have a holding account—

(i) apply to open a holding account under section 18A at the time the person notifies the EPA under paragraph (a); and

(ii) supply the account number of the holding account, or ensure that the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

(2) A notice under subsection (1)(a) must—

(a) be submitted to the EPA within 20 working days of the person becoming a participant in respect of the activity; and

(b) be in the prescribed form; and

(c) contain—

(i) the name of the person; and

(ii) the details of the activity that the person carries out; and

(iii) any other information that the EPA may require; and

(iv) if the person already has 1 or more holding accounts, the account number of the holding account that the person wishes to use for the purpose of section 61(1).

(3) The EPA must, as soon as practicable after receiving a notice under subsection (1)(a),—

(a) enter on a register kept by the EPA for the purpose of this section—

(i) the name of the person; and

(ii) the activity that the person carries out; and

(b) notify the person that the person's name and the activity the person carries out have been entered on the register.

(4) If the EPA receives a notice under subsection (1)(a) from a person whose name is already on the register kept in accordance with subsection (3), the EPA need not re-enter the person's name on the register, but must enter next to the person's name the activity that is specified in the notice, and notify the person that the activity has been entered on the register next to the person's name.

Section 56: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 56(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(1)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(1)(b)((ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(2)(c)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 57 Applicant to be registered as participant in respect of activities listed in Schedule 4

(1) A person who carries out an activity listed in Schedule 4, or who will do so at the time that the person's registration takes effect, may apply to be registered as a participant in respect of the activity by application to the EPA in accordance with subsection (2).

(2) An application under subsection (1) must—

(a) be in the prescribed form; and

(b) be accompanied by—

(i) any information that the EPA may require; and

(ii) the prescribed fee (if any); and

(c) if the person already has 1 or more holding accounts, contain the account number of the holding account that the person wishes to use for the purpose of section 61(1).

(3) Any person who does not have a holding account at the time the person submits an application under subsection (1) must—

(a) apply to open a holding account under section 18A at the time the person submits the application; and

(b) supply the account number of the holding account to the EPA within 10 working days of receiving an account number from the Registrar.

(4) Following the receipt of an application under subsection (1), the EPA must register the person in accordance with subsections (5) and (7) if satisfied that the person—

(a) in respect of the activity listed in Schedule 4 specified in the application—

(i) is carrying out the activity in the year in which the EPA receives the application; or

(ii) will carry out the activity in the year in which the person's registration will take effect in accordance with subsection (8); and

(b) has met any conditions of registration in respect of the activity in this Part or Part 5; and

(ba) has met any eligibility criteria prescribed in relation to the activity; and

(c) has paid any prescribed fees or charges.

(5) The EPA registers a person by entering on a register kept by the EPA for the purpose of this section—

(a) the name of the applicant; and

(b) the activity carried out by the applicant; and

(c) the date from which the applicant's registration as a participant in respect of the activity will take effect in accordance with subsection (8).

(6) After registering a person under subsection (5), the EPA must notify the following persons that the person has been registered as a participant in respect of the activity and the date from which the registration will take effect:

(a) the applicant; and

(b) by notice issued on the same date as the notice to the applicant, any other persons required to be notified under section 188(6)(a), 198(2)(a), or 209(2)(a), as the case may require.

(7) If the EPA receives an application under subsection (1) in respect of an activity listed in Part 2, 3, or 4 of Schedule 4, then the EPA must, within 20 working days of receiving the application,—

(a) decline the application; or

(b) register the applicant under subsection (5), unless the EPA requires further information from the applicant in order to satisfy himself or herself that the person is carrying out the activity specified in the application, in which case the EPA must either register the person within 20 working days of receiving the further information or decline the application.

(8) The registration of a person takes effect from the date the person's name is entered on the register under subsection (5) or any later date required by section 198(2)(b), or 209(2)(b).

(9) If the EPA receives an application under subsection (1) from a person whose name is already on the register kept in accordance with subsection (5), and registers the person in respect of the activity specified in the application, the EPA need not re-enter the person's name on the register, but must enter next to the person's name the activity that is specified in the application, and notify the person that the activity has been entered on the register next to the person's name.

Section 57: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 57 heading: amended, on 1 January 2013, by section 24(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 57(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4)(b): amended, on 8 December 2009, by section 24(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(4)(ba): inserted, on 1 January 2013, by section 24(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 57(4)(c): added, on 8 December 2009, by section 24(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(6)(b): amended, on 8 December 2009, by section 24(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(7): amended, on 8 December 2009, by section 24(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(8): amended, on 8 December 2009, by section 24(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(9): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 58 Removal from register of participants in respect of activities listed in Schedule 4

(1) A person who is registered under section 57 as a participant in respect of an activity listed in Schedule 4 may apply to have that person's name removed from the register in respect of the activity by application to the EPA in accordance with subsection (2).

(2) An application under subsection (1) must—

(a) be in the prescribed form; and

(b) be accompanied by the prescribed fee (if any).

(3) Following receipt of an application under subsection (1), the EPA must—

(a) note on the register—

(i) that the applicant has applied to be removed from the register as a participant in respect of the activity; and

(ii) the date on which the applicant's name is to be removed in accordance with subsection (4); and

(b) notify the applicant of the date on which the applicant's name was, or is to be, removed from the register in accordance with subsection (4); and

(c) notify, by notice issued on the same date as the notice to the applicant under paragraph (b), any other persons required to be notified under section 188(7)(a)(i), 198(3)(a), or 209(3)(a), as the case may require,—

(i) that the applicant has applied to have the applicant's name removed from the register as a participant in respect of the activity; and

(ii) the date that the applicant's name was, or is to be, removed in accordance with subsection (4).

(4) The EPA must remove the name of an applicant under subsection (1) from the register in respect of the activity specified in the application immediately or on any later date required by section 188(7)(a)(ii), 198(3)(b), or 209(3)(b).

Section 58: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 58(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 58(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 58(3)(c): amended, on 8 December 2009, by section 25(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 58(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 58(4): amended, on 8 December 2009, by section 25(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 59 Removal from register of participants in respect of activities listed in Schedules 3 and 4

(1) A person who is registered under section 56 or 57 in respect of an activity listed in Schedule 3 or 4 must notify the EPA as soon as practicable if the person ceases, or will cease, to carry out the activity for the remainder of the year and the whole of the following year.

(2) The EPA must, after receiving notice under subsection (1), or otherwise being satisfied that the person has ceased to carry out the activity for the remainder of the year and the whole of the following year,—

(a) remove the name of the person from the register in respect of the activity immediately or, if the notice specifies that the person will cease the activity on a future date, on that date; and

(b) notify the person, and any other person specified in section 188(7)(a)(i), 198(3)(a), or 209(3)(a), as the case may require, that the person's name—

(i) has been removed from the register in respect of the activity; or

(ii) if the person's name will be removed from the register in respect of the activity on a future date, that the person's name will be removed from the register in respect of the activity on that date.

(3) This section is subject to sections 200 and 211.

Section 59: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 59(1): amended, on 1 January 2013, by section 25 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 59(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 59(2): amended, on 1 January 2013, by section 25 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 59(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 59(2)(b): amended, on 8 December 2009, by section 26(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 59(3): amended, on 8 December 2009, by section 26(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 60 Exemptions in respect of activities listed in Schedule 3

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons carrying out an activity listed in Schedule 3 from being a participant under this Act in respect of—

(a) the activity; or

(b) part of the activity; or

(c) a proportion of the emissions from the activity; or

(d) a combination of the matters specified in paragraphs (a) to (c).

(1A) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.

(2) Before recommending the making of an order under subsection (1), the Minister must be satisfied that—

(a) the order will not materially undermine the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

(b) the costs of making the order do not exceed the benefits of making the order.

(3) In determining whether to recommend the making of an order under subsection (1), the Minister must have regard to the following matters:

(a) the need to maintain the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

(b) the desirability of minimising any compliance and administrative costs associated with the greenhouse gas emissions trading scheme established under this Act; and

(c) the relative costs of giving the exemption or not giving it, and who bears the costs; and

(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and

(e) any other matters the Minister considers relevant.

(4) While an order made under this section is in force, any person or class of persons in respect of whom the order is made is not required to comply with the obligations imposed on participants under this Part and Part 5 in respect of the matters covered by the order.

(5) Before recommending the making or revocation of an order under this section, the Minister must—

(a) consult with persons that the Minister considers are likely to be substantially affected by the making of the order; and

(b) give those persons the opportunity to make submissions; and

(c) consider those submissions.

(6) Despite anything in subsection (2) or (3), the Minister may make a recommendation for the making of an order under subsection (1) in respect of a person with whom the Crown has signed a negotiated greenhouse agreement if—

(a) the negotiated greenhouse agreement was signed before 31 December 2005; and

(b) the order relates to an activity of the person that is covered by the negotiated greenhouse agreement; and

(c) the order is in force for a period not exceeding the term of the negotiated greenhouse agreement, including any extension of the term made in accordance with the agreement.

(7) The Minister is not required to comply with subsection (5) before recommending the making of an order under subsection (1) in respect of a person with whom the Crown has signed a negotiated greenhouse agreement.

(8) A failure to comply with subsection (5) does not affect the validity of any order made.

Section 60: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 60(1)(a): amended, on 8 December 2009, by section 27(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1)(b): amended, on 8 December 2009, by section 27(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1)(c): amended, on 8 December 2009, by section 27(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1A): inserted, on 8 December 2009, by section 27(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(2)(b): amended, on 8 December 2009, by section 27(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 61 Requirement to have holding account

(1) A participant or an eligible person must have a holding account for the purpose of—

(a) surrendering units or repaying units as required under this Part or Part 5:

(b) receiving New Zealand units to which the participant or eligible person is entitled under this Part or Part 5.

(2) Despite anything in subsection (1), a person who does not have a holding account at the time the person becomes a participant complies with subsection (1) if the person complies with section 56(1)(b) or 57(3), as the case may require.

(3) Despite anything in this Act, the Registrar must, subject to section 18A(5), open a holding account in the name of—

(a) a person—

(i) who applies to open a holding account in accordance with section 56(1)(b) or 57(3); and

(ii) whose name has been entered on a register kept for the purposes of section 56 or 57; or

(b) an eligible person.

Section 61: substituted, on 8 December 2009, by section 28 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 62 Monitoring of emissions and removals

A participant must, in respect of each activity listed in Schedule 3 or 4 that is carried out by the participant in a year,—

(a) collect the prescribed data or other prescribed information (which data or information must, if required by regulations made under this Act, be verified by a person or organisation recognised by the EPA under section 92); and

(b) calculate the emissions and the removals from the activity in accordance with the methodologies prescribed in regulations made under this Act; and

(c) if required by regulations made under this Act, have the calculations verified by a person or organisation recognised by the EPA under section 92; and

(d) keep, in the prescribed format (if any), records of the data or information and calculations.

Section 62: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 62(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 62(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 62(d): substituted, on 8 December 2009, by section 29 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 63 Liability to surrender units to cover emissions

(1) A participant is liable to surrender 1 unit for each whole tonne of emissions from each activity listed in Schedule 3 or 4 that the participant carries out,—

(a) as calculated in accordance with this Act; and

(b) at the times required under this Act.

(2) If a participant is liable to surrender units under this Act, the participant must make an application under section 18C to transfer the required number of units from the participant's holding account to a surrender account designated by the EPA.

(3) Subsection (1) is subject to section 191(1)(c).

Section 63: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 63(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 63(3): inserted (with effect on 16 May 2014), on 20 May 2014, by section 4 of the Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30).

### 63A Modification of liability to surrender units to cover certain emissions

*[Repealed]*

Section 63A: repealed, on 1 January 2019, by section 63A(3).

### 64 Entitlement to receive New Zealand units for removal activities

(1) A participant is entitled to receive 1 New Zealand unit for each whole tonne of removals from the participant's removal activities, as calculated in accordance with this Act.

(2) If a participant submits an emissions return to the EPA that contains an assessment of the participant's entitlement to receive New Zealand units, then the EPA must, within 20 working days of receiving the emissions return, direct the Registrar to transfer the number of New Zealand units contained in the assessment to the participant's holding account.

(3) Subsection (2) does not apply if, within 20 working days of the EPA receiving the emissions return, the EPA or an enforcement officer serves notice on the participant under section 94 requiring the participant to provide information in respect of any matter contained in the emissions return.

(4) *[Repealed]*

(5) *[Repealed]*

Section 64: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 64(2): substituted, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 64(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 64(3): substituted, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 64(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 64(4): repealed, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 64(5): repealed, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 64A Modification of entitlement to receive New Zealand units for removal activities

*[Repealed]*

Section 64A: repealed, on 1 January 2019, by section 64A(3).

### 65 Annual emissions returns

(1) In the period beginning on 1 January and ending on 31 March in each year, a participant—

(a) must submit an annual emissions return to the EPA in respect of each of the activities listed in Schedule 3 or Part 2, 3, or 4 of Schedule 4 that the participant carried out in the immediately preceding year:

(b) must, in the case where approval for the participant's offsetting forest land application is treated as revoked under section 186D(2) or is revoked under section 186G(1), submit an annual emissions return to the EPA in respect of the activity listed in Part 1 of Schedule 3 that the participant carried out that covers the period—

(i) beginning when the activity first occurred; and

(ii) ending on the date that the revocation occurred.

(1A) For the purposes of the annual emissions return, the activity carried out in the period specified in subsection (1)(b) is to be treated as if it were carried out in the immediately preceding year.

(2) The annual emissions return must, in respect of activities that the participant carried out during the year covered by the return,—

(a) record the participant's activities; and

(b) record the participant's emissions and removals as calculated and, if required, as verified under section 62(b) and (c); and

(c) contain an assessment of the participant's—

(i) liability to surrender units in respect of the participant's emissions; and

(ii) entitlement to receive New Zealand units for the participant's removals; and

(d) be accompanied by such other information as may be prescribed; and

(e) be accompanied by the prescribed fee (if any); and

(f) be signed by the participant.

(2A) If section 186E(1) applies,—

(a) subsection (2)(b) and (c) do not apply; and

(b) the annual emissions return must record the emissions for the relevant pre-1990 forest land under section 186D(3)(c) as emissions of the participant for an activity listed in Part 1A of Schedule 3 for which the participant is liable to surrender units.

(3) The participant must submit the annual emissions return under subsection (1) by submitting it in the prescribed manner and format.

(4) Following the submission of an annual emissions return under subsection (1), a participant must, by 31 May, surrender the number of units listed in the participant's assessment under subsection (2)(c)(i) or recorded under subsection (2A)(b).

(5) A participant who carries out an activity listed in Part 1 of Schedule 4 must submit emissions returns as set out in section 189(2).

Section 65: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 65(1): replaced, on 1 January 2013, by section 28(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(1A): inserted, on 1 January 2013, by section 28(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(2A): inserted, on 1 January 2013, by section 28(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(4): amended, on 1 January 2013, by section 28(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(4): amended, on 8 December 2009, by section 31(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 66 Quarterly returns for other removal activities

(1) Despite anything in this Act, a person who is a participant in respect of an activity listed in Part 2 of Schedule 4 may, within 20 working days after the following dates, submit an emissions return that complies with subsection (2):

(a) 31 March:

(b) 30 June:

(c) 30 September.

(2) An emissions return referred to in subsection (1) must—

(a) only relate to activities listed in Part 2 of Schedule 4 in respect of which the person is a participant; and

(b) in respect of each activity covered by the return, be in respect of the period—

(i) commencing on the later of—

(A) the day the person became a participant in respect of the activity; or

(B) the day after the end of the period covered by the participant's last emissions return in respect of the activity; and

(ii) ending on a date specified in subsection (1); and

(c) contain the information specified in section 65(2) in respect of the period covered by the return; and

(d) be submitted in accordance with section 65(3).

(3) Despite anything in section 65, the annual emissions return of a participant who has submitted a return for an activity under this section in any year must cover only the part of the year not covered by a return under this section.

Section 66: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 67 Retention of emissions records

(1) A participant must keep sufficient records to enable the EPA to verify, in respect of any year in which the participant carries or carried out an activity listed in Schedule 3 or 4,—

(a) the activities carried out by the participant; and

(b) the emissions and removals from those activities as calculated and, if required, as verified under section 62(b) and (c); and

(c) the participant's assessment of the participant's—

(i) liability to surrender units; and

(ii) entitlement to receive New Zealand units; and

(d) any other information contained in an emissions return submitted by the participant.

(2) The records specified in subsection (1) must—

(a) include the records specified in section 62(d); and

(b) in the case where they relate to an activity listed in Part 1 of Schedule 3 or 4, be retained for a period of at least 20 years after the end of the year to which they relate; and

(c) in every other case, be retained for a period of at least 7 years after the end of the year to which they relate.

Section 67: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 67(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## Subpart 2—Issuing and allocating New Zealand units

Subpart 2 heading: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 68 Issuing New Zealand units

(1) The Minister may, at any time, direct the Registrar to issue New Zealand units into a Crown holding account.

(2) Before giving a direction, the Minister must—

(a) consult the Minister of Finance; and

(b) have regard to the following matters:

(i) the number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement; and

(ii) New Zealand's international obligations, including any obligation to retire units equal to the number of tonnes of emissions that are emitted in New Zealand; and

(iii) the proper functioning of the greenhouse gas emissions trading scheme established under this Act; and

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

(c) if the direction under subsection (1) relates to issuing New Zealand units into a Crown holding account on or after 1 January 2013, and if there is no subsequent commitment period specified or determined under the Protocol or no successor international agreement to the Protocol, have regard to the following matters:

(i) New Zealand's annual emissions for the 5 years (on record) before the year of the direction under consideration; and

(ii) the report of the most recent review completed under section 160(1); and

(iii) New Zealand's obligations under the Convention (if any); and

(iv) New Zealand's anticipated future international obligations.

(3) The Registrar must give effect to a direction given by the Minister under subsection (1).

(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) ensure that the direction is accessible via the Internet site of the EPA; and

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

(5) Each copy 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, if relevant, subsection (2)(c).

Section 68: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 68(4)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 69 Notification of intention regarding New Zealand units

(1) The Minister must give notice in the *Gazette* of the Crown's intentions to issue and allocate or sell New Zealand units at least 9 months before the end of each of the following periods:

(a) the first commitment period:

(b) each subsequent commitment period (if any):

(c) if there is no subsequent commitment period, then—

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

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

(2) The notice must include—

(a) the number of New Zealand units that are intended to be issued under section 68; and

(b) the time frames for issuing the New Zealand units under section 68; and

(c) the intended time frame for any allocation of New Zealand units, or the sale of New Zealand units and the method of sale.

(3) The Minister must present a copy of the report under section 160(7)(b) to the House of Representatives before notice may be given under this section.

(4) The Minister must ensure that a copy of any notice given under subsection (1) is accessible via the Internet site of the EPA.

(5) The Crown is not bound by any notice given under subsection (1) to make any decisions in relation to the issuing, sale, or allocation of New Zealand units.

Section 69: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 69(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

*Allocation of New Zealand units in relation to pre-1990 forest land and fishing*

Heading: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 70 Governor-General may issue allocation plans

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, issue an allocation plan providing for the matters in section 72 or 74.

(2) The allocation plan must—

(a) comply with any relevant requirements specified in this subpart; and

(b) be presented to the House of Representatives as soon as practicable after it is issued, along with, in the case of the fishing allocation plan, the report provided to the Minister under section 76(5) and any of the Minister's decisions on the recommendations contained in the report.

(3) An allocation plan comes into force on the day after the date it is presented to the House of Representatives.

(4) An allocation plan is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 70: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 70(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 71 Correction of allocation plans

(1) For the purpose of correcting any minor mistakes or defects in an allocation plan, the Minister may, without complying with section 75 or 76, recommend that the Governor-General amend any allocation plan.

(2) An amended allocation plan comes into force at the time it is issued.

(3) Section 70(2)(b) and (3) do not apply to an amended allocation plan.

Section 71: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 72 Allocation in respect of pre-1990 forest land

(1) The Minister must recommend to the Governor-General that an allocation plan be issued under section 70 in respect of pre-1990 forest land.

(2) The pre-1990 forest land allocation plan must provide for—

(a) an allocation of New Zealand units to—

(i) landowners, or former landowners, of eligible land who are eligible persons; or

(ii) a person appointed in accordance with section 73 to hold any New Zealand units allocated in respect of the eligible land specified in paragraph (b)(i)(A); and

(b) an allocation of New Zealand units 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, other than land covered by subparagraph (i) that was transferred to the landowner, or former landowner, of the land—

(A) after 31 October 2002; or

(B) before 1 November 2002 if, since that date, ownership (including, if specified in the allocation plan, the beneficial ownership) of any body corporate owning the land or, if specified in the allocation plan, the beneficial ownership of the land owned by a body corporate, has changed in the manner and to the extent specified in the allocation plan:

(iii) 60 New Zealand units for each hectare of eligible land not covered in subparagraph (i) or (ii).

(3) The pre-1990 forest land allocation plan must provide that the New Zealand units allocated under the plan will be transferred so that—

(a) a person allocated 18 units for each hectare of eligible land in accordance with subsection (2)(b)(i) receives—

(i) 7 units for each hectare of eligible land by 31 December 2012; and

(ii) 11 units for each hectare of eligible land after 31 December 2012; and

(b) a person allocated 39 units for each hectare of eligible land in accordance with subsection (2)(b)(ii) receives—

(i) 15 units for each hectare of eligible land by 31 December 2012; and

(ii) 24 units for each hectare of eligible land after 31 December 2012; and

(c) a person allocated 60 units for each hectare of eligible land in accordance with subsection (2)(b)(iii) receives—

(i) 23 units for each hectare of eligible land by 31 December 2012; and

(ii) 37 units for each hectare of eligible land after 31 December 2012.

(4) In addition to the matters provided for in subsections (2) and (3), the pre-1990 forest land allocation plan—

(a) must specify—

(i) the landowners, or former landowners, of the eligible land who are eligible persons; and

(ii) the manner in which, and the extent to which, the ownership of eligible land must have changed to constitute a "transfer" for the purposes of subsection (2)(b)(ii)(A) or (B); and

(iii) the circumstances, if any, in which a transfer for the purposes of subsection (2)(b)(ii) includes transmission; and

(iv) 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)(b)(ii)(B); and

(v) the data and information, or the kind of data and information, that each eligible person must supply, and the form in which the person must supply the data and information, in order to—

(A) receive an allocation of New Zealand units under the plan; and

(B) enable the Minister to determine the person's correct allocation of New Zealand units under the allocation plan; and

(vi) in relation to an eligible person who receives an allocation of New Zealand units,—

(A) the records, or the kinds of records, that the person must retain; and

(B) the form in which the person must retain the records; and

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

(b) may specify—

(i) the manner in which, and the extent to which, the beneficial ownership of eligible land must have changed to constitute a "transfer" for the purposes of subsection (2)(b)(ii)(A) or (B); and

(ii) the manner in which, and the extent to which, the beneficial ownership of any body corporate owning eligible land, or, if relevant, the beneficial ownership of the land owned by a body corporate,

must have changed for the purposes of subsection (2)(b)(ii)(B); and

(c) may provide for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

(5) Despite subsection (2)(b), the pre-1990 forest land 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)(b)(iii).

(6) For the purposes of—

(a) this section,—

(i) eligible land is to be treated as transferred on the settlement date, unless the pre-1990 forest land allocation plan specifies another date or event upon which any or all eligible land is to be treated as transferred; and

(ii) **Crown forest licence land** means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989; and

(b) subsection (2)(b)(ii),—

(i) **transfer** means a transfer specified in the pre-1990 forest land allocation plan, but does not include transmission unless the allocation plan specifies otherwise (for example, in relation to any land vested under an Act); and

(ii) **body corporate** means a company whether incorporated in New Zealand or elsewhere and any other body corporate specified in the pre-1990 forest land allocation plan.

Section 72: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 73 Minister to appoint person to hold certain New Zealand units

(1) The Minister must, before making a determination in respect of the eligible land specified in section 72(2)(b)(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) notify—

(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) before issuing a notice under section 77(1) inviting persons to apply for an allocation of New Zealand units under the pre-1990 forest land allocation plan, 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 specified in section 72(2)(b)(i)(A) on behalf of the person to be appointed under subsection (1).

Section 73: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 74 Allocation to owners of fishing quota

(1) The Minister must recommend to the Governor-General that an allocation plan be issued under section 70 in relation to fishing.

(2) The fishing allocation plan must provide for—

(a) an allocation of New Zealand units to persons who—

(i) were shown on the quota register kept under Part 8 of the Fisheries Act 1996 as owners of fishing quota on 24 September 2009; and

(ii) meet any tests or thresholds that are specified in the allocation plan; and

(b) a total of 700 000 New Zealand units to be available for allocation under the allocation plan; and

(c) an allocation of New Zealand units to each eligible person calculated in accordance with the following formula:

$$P = A \times (B + C)/(D + E)$$

where—

P is the eligible person's allocation entitlement under the fishing allocation plan

A is 700 000 New Zealand units

B is the total quota weight equivalent (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters, owned by the eligible person on the close of 24 September 2009

C is the total quota weight equivalent (expressed as a number of oysters) of Foveaux Strait dredge oyster stock owned by the eligible person on the close of 24 September 2009 divided by 9.8

D is the sum of the total allowable commercial catch (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown), on the close of 24 September 2009

E is the sum of the total allowable commercial catch (expressed as a number of oysters) of the Foveaux Strait dredge oyster stock divi-

ded by 9.8 (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown) on the close of 24 September 2009; and

(d) the data and information, or the kind of data and information, that each eligible person must supply, and the form in which the person must supply the data and information, in order to—

(i) receive an allocation of New Zealand units under the allocation plan; and

(ii) enable the Minister to determine the person's correct allocation of New Zealand units under the allocation plan; and

(e) in relation to an eligible person who receives an allocation of New Zealand units,—

(i) the records, or the kinds 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

(f) any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

(3) For the purposes of this section, **quota weight equivalent** and **total allowable commercial catch** have the same meaning as in section 2(1) of the Fisheries Act 1996.

Section 74: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 75 Consultation on pre-1990 forest land allocation plan

(1) Before making a recommendation under section 72, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of persons that appear to the Minister or the chief executive likely to have an interest in the pre-1990 forest land allocation plan.

(2) A failure to comply with this section does not affect the validity of any pre-1990 forest land allocation plan issued under section 70.

(3) Any consultation undertaken before the commencement of this section in respect of the pre-1990 forest land allocation plan is to be treated as the consultation required for the purposes of this section.

Section 75: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 76 Consultation on fishing allocation plan

(1) Before making a recommendation under section 74(1), the Minister must—

(a) prepare a draft fishing allocation plan; and

(b) consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the fishing allocation plan.

(2) The draft fishing allocation plan must provide for the matters set out in section 74(2).

(3) The Minister must ensure that—

(a) public notice is given of the draft fishing allocation plan; and

(b) the draft fishing allocation plan is made available in hard copy at the office of, and is accessible via the Internet site of the department of, the chief executive responsible for the administration of this Act and at such other places as the Minister considers appropriate.

(4) The notice of the draft fishing allocation plan given under subsection (3) must specify—

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

(b) that any person may make a submission on the draft fishing allocation plan, how submissions may be made, and by what date submissions must be made (which must be no earlier than 20 working days after the date on which notice is given).

(5) If any submission is made on the draft fishing allocation plan under subsection (4), the chief executive must, after the expiry of the time for making submissions, prepare for the Minister a report that contains recommendations in respect of the submissions.

Section 76: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 77 Determinations made in accordance with allocation plan

(1) As soon as practicable after an allocation plan comes into force, 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 notice under subsection (1) must specify—

(a) the form in which an application must be made; and

(b) the final date by which applications for an allocation of New Zealand units under the allocation plan must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 40 working days after the date on which the notice is given and, in the case of a fishing allocation plan, be no earlier than 20 working days after the date on which the notice is given); and

(c) the data and other information, or the kind of data and other information, that must accompany the application in order for the person's application

to be considered (which must be the data and other information specified in the allocation plan); and

(d) how the data and other information are to be supplied.

(3) To avoid doubt, data and information supplied under subsection (2) are subject to the Official Information Act 1982.

(4) Despite anything in this subpart or in any allocation plan,—

(a) a person is not entitled to receive an allocation of New Zealand units under an allocation plan unless the person applies to the Minister for an allocation under the allocation plan and supplies the required data and other information in the required format; and

(b) the Minister is not required to make a determination in respect of an application for an allocation if the application is received after the date specified in the notice under subsection (2)(b).

(5) The Minister must, in relation to each application received by the date specified in the notice given under subsection (1), make a preliminary determination in accordance with the allocation plan as to—

(a) whether the person is eligible to receive an allocation of New Zealand units under the plan; and

(b) the total number of New Zealand units the person is entitled to receive under the plan (which may be expressed by reference to a formula); and

(c) the year or years in which the New Zealand units will be transferred to the person.

(6) After making a preliminary determination, the Minister must notify the applicant of the following:

(a) whether, in the Minister's opinion, the person is an eligible person under the allocation plan, and—

(i) if so, the total number of New Zealand units the Minister has determined the person is entitled to receive under the plan (which may be expressed by reference to a formula) and the year or years in which those units will be transferred; and

(ii) if not, the reasons for that opinion; and

(b) that, if the applicant believes there are any errors or miscalculations in the Minister's preliminary determination of eligibility or entitlement, the person may provide further information to the Minister supporting a different determination; and

(c) the final date by which any further information must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 20 working days after the date on which the notice is given, and in the case of a fishing allocation plan, be no earlier than 10 working days after the date on which the notice is given).

(7) Following the expiry of the date referred to in subsection (6)(c), the Minister must, taking into account any information received by the due date in response to the notice, make a final determination of the matters specified in subsection (5).

(8) As soon as practicable after making a final determination under subsection (7), the Minister must—

(a) notify the applicant of the determination; and

(b) publish the determination in the *Gazette*; and

(c) ensure that the determination is accessible via the Internet site of the EPA; and

(d) if New Zealand units are allocated to an applicant, direct the Registrar to transfer the allocated New Zealand units to the applicant's holding account in the amounts and on the date or dates specified in the determination.

(8A) Despite subsection (8)(d), if the applicant does not have a holding account, the Registrar is not required to comply with a direction by the Minister until the applicant has opened a holding account that has been approved by the Registrar.

(9) For the purposes of making a preliminary determination under subsection (5) or a final determination under subsection (7) in respect of a fishing allocation plan, the Minister may access, and rely on, the information set out in the quota register kept under Part 8 of the Fisheries Act 1996.

(10) To avoid doubt, and without limiting the powers conferred under sections 94 to 106, the EPA or any other person with powers under sections 94 to 106 may exercise those powers for the purposes of ascertaining whether a person who applies for an allocation of New Zealand units or is allocated New Zealand units under an allocation plan is complying with, or has complied with,—

(a) any requirement in this section or section 78 or 79; or

(b) any requirement in the relevant allocation plan (for example, a requirement to keep records).

Section 77: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 77(8)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 77(8A): inserted, on 1 January 2013, by section 29 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 77(10): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 78 Power to revoke and replace determinations

(1) Despite anything in section 77(7) or (8), the Minister may (but is not required to) reconsider, revoke, and replace a determination made under section 77(7) with a new determination if—

(a) the allocation plan under which the determination was made is amended; or

(b) in the Minister's opinion, the determination has resulted, or would otherwise result, in a person receiving an incorrect allocation because—

(i) of an error in the application of the criteria specified in the applicable allocation plan; or

(ii) a person has provided altered, false, incomplete, or misleading information in response to a notice given under section 77(1) or (6) or 86E.

(2) Before revoking and replacing a determination that would affect the number of units allocated to a person, the Minister must—

(a) make a preliminary determination of the matters specified in section 77(5); and

(b) give notice to the person of—

(i) the ground specified in subsection (1) and any information that led the Minister to reconsider the person's allocation under the relevant allocation plan; and

(ii) the Minister's preliminary determination made under paragraph (a); and

(c) follow the procedure in section 77(6) to (8), which apply, with any necessary modifications, to the new determination.

(3) The Minister may not revoke or replace a determination under this section after the expiry of 4 years from the date of notification of the Minister's first determination under section 77(7) if the new determination would decrease the number of units allocated to a person.

(4) Despite subsection (3), if the Minister is satisfied that an application for an allocation under an allocation plan, or any other document submitted in respect of the application, was submitted with the intention to deceive, then the Minister may revoke and replace any determination that resulted from the application at any time so as to decrease the number of units allocated to the applicant (including decreasing that number to zero).

(5) Subsections (6) and (7) apply if—

(a) the Minister has made a determination under section 77 that Te Ohu Kai Moana Trustee Limited is entitled to receive New Zealand units under a fishing allocation plan; and

(b) New Zealand units have been transferred to Te Ohu Kai Moana Trustee Limited under the determination in respect of unallocated quota; and

(c) Te Ohu Kai Moana Trustee Limited has allocated and transferred unallocated quota together with New Zealand units associated with that quota to any iwi or mandated iwi organisation in accordance with section 138A(2) of the Maori Fisheries Act 2004; and

(d) the Minister reconsiders the determination.

(6) In reconsidering the determination of Te Ohu Kai Moana Trustee Limited's entitlement, the Minister must treat an iwi or a mandated iwi organisation which has received unallocated quota from Te Ohu Kai Moana Trustee Limited as if it owned that quota on 24 September 2009.

(7) If the Minister decides that the determination of Te Ohu Kai Moana Trustee Limited's entitlement to New Zealand units should be revoked, the Minister must make a new determination of—

(a) Te Ohu Kai Moana Trustee Limited's entitlement to be allocated New Zealand units under the fishing allocation plan as if the unallocated quota that Te Ohu Kai Moana Trustee Limited owns on the date of the new determination were all the unallocated quota it owned on 24 September 2009; and

(b) the entitlement of an iwi or a mandated iwi organisation that has received unallocated quota to be allocated New Zealand units under the fishing allocation plan as if that iwi or mandated iwi organisation owned the unallocated quota it received on 24 September 2009.

(8) In subsections (5) to (7) and section 79(4),—

**iwi** has the same meaning as in section 5 of the Maori Fisheries Act 2004

**mandated iwi organisation** has the same meaning as in section 5 of the Maori Fisheries Act 2004

**unallocated quota** means quota held by Te Ohu Kai Moana Trustee Limited on 24 September 2009 and that had not been allocated under section 130(1), 135, or 151 of the Maori Fisheries Act 2004 at that date.

Section 78: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 79 Effect of new determination

(1) If the Minister makes a new determination in accordance with section 78, then—

(a) the new determination applies and replaces the earlier determination from the date the new determination is made; and

(b) the Minister—

(i) may, if practicable, amend or revoke any direction given under section 77(8)(d); or

(ii) must otherwise give any new direction necessary under section 77(8)(d) in order to give effect to the new determination.

(2) Subject to subsection (3), a new determination does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with a revoked determination before the date the new determination came into effect.

(3) If New Zealand units have been transferred to a person under an earlier determination and the person would not be entitled under the new determination to those New Zealand units (including where the result of the new determination is that the person would not be entitled to any New Zealand units under the allocation plan), then—

(a) the notice of the new determination given to the person under section 77(8) must specify—

(i) the number of units required to be repaid; and

(ii) the Crown holding account into which they must be transferred; and

(b) the person must, within 60 working days of the date of the notice, repay those units by transferring the specified number of units to a Crown holding account in accordance with the notice, and sections 134 and 135 apply, with any necessary modifications, as if—

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

(ii) the requirement to repay the units arose under section 125.

(4) This section applies to any new determination made in accordance with section 78(7) as if—

(a) only the New Zealand units associated with the unallocated quota held by Te Ohu Kai Moana Trustee Limited at the date of the new determination had been transferred to it under the earlier determination; and

(b) the New Zealand units associated with the unallocated quota transferred to an iwi or a mandated iwi organisation by Te Ohu Kai Moana Trustee Limited had been transferred to the iwi or mandated iwi organisation under the earlier determination.

Section 79: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 79(3)(b): amended, on 1 January 2013, by section 30 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

*Allocation of New Zealand units in relation to industry and agriculture*

Heading: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 80 Criteria for allocation of New Zealand units to industry

(1) A person is eligible for an allocation of New Zealand units for an eligible industrial activity in respect of a year if the person carries out the activity at any time in a year.

(2) Subsection (1) is subject to sections 86E and 161D(7).

Section 80: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 81 Entitlement to provisional allocation for eligible industrial activities

Subject to section 82, an eligible person is entitled to a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year calculated in accordance with the following formula:

$$PA = LA \times \sum(PDCT \times AB)$$

where—

PA is the person's provisional allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the eligible industrial activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
  - (i) 0.6 in 2010, 2011, and 2012; and
  - (ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a moderately emissions-intensive eligible industrial activity):
- (b) for a highly emissions-intensive eligible industrial activity,—
  - (i) 0.9 in 2010, 2011, and 2012; and
  - (ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a highly emissions-intensive eligible industrial activity)

$\sum$ is the symbol for summation (of each PDCT × AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year immediately preceding the year to which the provisional allocation relates, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

Section 81: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 81 formula item LA paragraph (a)(ii): replaced, on 1 January 2013, by section 31(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 81 formula item LA paragraph (b)(ii): replaced, on 1 January 2013, by section 31(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 82 Entitlement to allocation for eligible industrial activities where provisional allocation not received

(1) An eligible person who carries out an eligible industrial activity at any time in a year, but did not carry out that activity during the immediately preceding year (a **new entrant**) is not entitled to a provisional allocation calculated under section 81, but is entitled to an allocation under subsection (2).

(2) A new entrant or other eligible person who did not receive a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year is entitled to an allocation of New Zealand units for the eligible industrial activity for the year calculated in accordance with the formula in section 83(2).

Section 82: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 83 Annual allocation adjustment

(1) A person who has received a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year must, subject to section 84, calculate the person's annual allocation adjustment for the activity for the year by—

(a) determining the person's final allocation entitlement for the eligible industrial activity in respect of the year in accordance with the formula in subsection (2); and

(b) then determining the annual allocation adjustment in accordance with the formula in subsection (3).

(2) The formula for the calculation of a person's final allocation entitlement is as follows:

$$FA = LA \times \sum(PDCT \times AB)$$

where—

FA is the person's final allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the activity for the year, being,—

(a) for a moderately emissions-intensive eligible industrial activity,—

(i) 0.6 in 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a moderately emissions-intensive eligible industrial activity):

(b) for a highly emissions-intensive eligible industrial activity,—

(i) 0.9 in 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a highly emissions-intensive eligible industrial activity)

∑ is the symbol for summation (of each PDCT × AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

(3) The formula for the calculation of a person's annual allocation adjustment is as follows:

$$AA = PA - FA$$

where—

AA is the person's annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person's provisional allocation for the eligible industrial activity notified by the EPA under section 86B

FA is the person's final allocation entitlement for the eligible industrial activity for the year calculated under subsection (2).

(4) If the figure for AA calculated under the formula in subsection (3)—

(a) is a negative number, then the person is entitled to be allocated the number of units in the annual allocation adjustment:

(b) is a positive number, then the person is liable to repay the number of units in the annual allocation adjustment.

(5) If an eligible person is entitled to be allocated the number of units in an annual allocation adjustment and the person—

(a) makes an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must record the adjustment in the person's application for a provisional allocation for the following year:

(b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the

annual allocation adjustment relates, the person may make a separate application under section 86 for an allocation of the number of units in the annual allocation adjustment.

(6) If an eligible person is liable to repay the number of units in an annual allocation adjustment and the person—

(a) makes an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then—

(i) the person must record the adjustment for the year in the person's application for a provisional allocation for the following year; and

(ii) subject to section 86B, the EPA must deduct the number of units in the adjustment from the provisional allocation for the following year, unless the number of units in the provisional allocation is less than the adjustment, in which case the person must, within 20 working days of being notified of the shortfall in the number of units by the EPA, repay the shortfall by transferring the relevant number of units to a Crown holding account designated by the EPA; or

(b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must—

(i) by 30 April in the year following the year to which the annual allocation adjustment relates, notify the EPA of the person's annual allocation adjustment; and

(ii) by 31 May in the year following the year to which the annual allocation adjustment relates, repay the number of units in the annual allocation adjustment by transferring the units to a Crown holding account designated by the EPA.

(7) If a person is required to repay units under this section, then—

(a) the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid; and

(b) sections 134 and 135 apply, with any necessary modifications, as if—

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

(ii) the requirement to repay the units arose under section 125.

Section 83: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 83(2) formula item LA paragraph (a)(ii): replaced, on 1 January 2013, by section 32(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 83(2) formula item LA paragraph (b)(ii): replaced, on 1 January 2013, by section 32(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 83(3) formula item PA: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(b)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 84 Closing allocation adjustment

(1) An eligible person who has received a provisional allocation for an eligible industrial activity in respect of a year and who ceases during the year to carry out that activity must, within 20 working days of ceasing to carry out the activity,—

(a) calculate the person's final allocation entitlement for the activity for the year in accordance with the formula in section 83(2); and

(b) using the formula in section 83(3), calculate the person's closing allocation adjustment, and, for this purpose, section 83(3) applies, with any necessary modifications, as if the closing allocation adjustment were an annual allocation adjustment; and

(c) if the closing allocation adjustment is—

(i) a negative number, apply to the EPA under section 86 for an allocation of the number of units in the closing allocation adjustment:

(ii) a positive number, notify the EPA of the person's closing allocation adjustment and repay the number of units in the closing allocation adjustment by transferring the units to a Crown holding account designated by the EPA.

(2) For the purposes of subsection (1), a person who has received a provisional allocation for an eligible industrial activity in respect of a year and who temporarily does not carry out the activity—

(a) is not immediately to be treated as having ceased to carry out the activity; but

(b) must, if the person does not carry out the activity for a period of 3 months in the year, notify the EPA as soon as practicable after the expiry of that 3-month period of that fact; and

(c) must, if given notice by the EPA (following receipt of the person's notice under paragraph (b)) that the EPA is satisfied that the person has ceased to carry out the activity for the year and that the person is required to comply with subsection (1), within 20 working days of the date of the EPA's notice, comply with subsection (1).

(3) Subject to subsection (4), an eligible person who has complied with subsection (1) during the year in which the person ceased to carry out the eligible industrial activity—

(a) is not required to comply with section 83 in respect of that activity; and

(b) may not calculate an annual allocation adjustment under section 83 in respect of that year.

(4) A person who has applied for or notified a closing allocation adjustment in accordance with subsection (1) during a year, but who then recommences carrying out the activity in the year,—

(a) may calculate an annual allocation adjustment for the year in accordance with the following formula:

$$AA = PA – FA – CAA$$

where—

AA is the person's annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person's provisional allocation for the eligible industrial activity for the year notified by the EPA under section 86B

FA is the person's final allocation entitlement for the eligible industrial activity for the year (which must be calculated in accordance with section 83(2))

CAA is the amount of the person's closing allocation adjustment for the eligible industrial activity; and

(b) is entitled to be allocated the number of units in the person's annual allocation adjustment (as calculated under paragraph (a)) in accordance with section 83(5).

(5) Section 83(7) applies to the repayment of units under this section as if the units were required to be repaid under section 83.

Section 84: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 84(1)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(1)(c)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(2)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(4)(a) formula item PA: amended, on 1 January 2013, by section 33 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 84A Temporary suspension of allocation entitlement for eligible industrial activities

*[Repealed]*

Section 84A: repealed, on 1 January 2019, by section 84A(4).

### 85 Allocation of New Zealand units in relation to agriculture

(1) A person is eligible for an allocation of New Zealand units for an eligible agricultural activity in respect of a year if the person carries out the activity at any time in the year.

(2) An eligible person is entitled to an allocation for the eligible agricultural activity in respect of the year calculated in accordance with the following formula:

$$A = LA \times \sum(PDCT \times AB)$$

where—

A is the person's allocation entitlement for the eligible agricultural activity for the year

LA is the level of assistance for the eligible agricultural activity for the year, being—

(a) 0.9 for the first year in which surrender obligations are applicable for the activity; and

(b) in each year after the first year in which surrender obligations are applicable for the activity, the level of assistance from the previous year less 0.01 (the phase-out rate for an eligible agricultural activity)

$\sum$ is the symbol for summation (of each PDCT × AB calculation)

PDCT is the total amount of each product from the eligible agricultural activity produced by the person in the year as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product.

(3) Despite section 86(1)(c), a person who ceases to carry out an eligible agricultural activity in a year may, within 20 working days of ceasing to carry out the activity, apply under section 86 for an allocation for that year calculated in accordance with the formula in subsection (2).

(4) A person—

(a) is not to be treated as having ceased to carry out an eligible agricultural activity for the purposes of subsection (3) and section 59, if the person does not continuously carry out the activity during a year; but

(b) must, if the person does not carry out the eligible agricultural activity for a period of 3 months in a year, be treated as having ceased to carry out the activity in the year.

(5) Subject to subsection (6), an eligible person who has applied for an allocation for a year (the **closing year**) in accordance with subsection (3) may not apply under section 86 for a further allocation in respect of the closing year.

(6) An eligible person who has applied in accordance with subsection (3) for an allocation in respect of a closing year, but who then recommences carrying out the activity in the closing year may apply under section 86 for an allocation in respect of the part of the year after the date the person recommenced carrying out the activity (and which was not covered by the application made in accordance with subsection (3)) and, for that purpose, subsection (2) applies as if the year were the part of the year from the date the person recommenced carrying out the activity.

Section 85: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 85(2) formula item LA paragraph (a): replaced, on 1 January 2013, by section 35 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 85(2) formula item LA paragraph (b): replaced, on 1 January 2013, by section 35 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 85A Temporary suspension of phase-out rates for assistance under sections 81, 83(2), and 85(2)

(1) The purpose of this section is to suspend temporarily the phase-out rates for assistance under sections 81, 83(2), and 85(2) until the relevant participants face full surrender obligations.

(2) Despite anything in sections 81, 83(2), and 85(2),—

(a) the phase-out rates in those sections may not reduce the level of assistance for an eligible activity from its 2012 level or the level in the first year in which full surrender obligations are applicable for the activity (as the case may be) during the period—

(i) beginning on the date that this section comes into force; and

(ii) ending, in respect of either or both of those activities, on the close of the date specified for the purpose of this section as the closure date in an Order in Council made by the Governor-General on the recommendation of the Minister; and

(b) the relevant phase-out rate applies for each year after the year of the closure date specified in that order.

(3) Before the Minister may make a recommendation under subsection (2)(a)(ii), the Minister must be satisfied that the relevant participants face full surrender obligations.

(4) This section is repealed on the day after the closure date specified in the Order in Council made under subsection (2)(a)(ii) that specifies the end of all suspensions under this section.

Section 85A: inserted, on 1 January 2013, by section 36 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 85B Temporary suspension of allocation entitlement for eligible agricultural activities

*[Repealed]*

Section 85B: repealed, on 1 January 2017, by section 7 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 86 Applications for allocation of New Zealand units for industry and agriculture

(1) An eligible person who wishes to be allocated New Zealand units for an eligible industrial activity or eligible agricultural activity under this subpart must, unless this subpart otherwise provides, apply to the EPA, in the period beginning on 1 January and ending with the close of 30 April in a year, for—

(a) a provisional allocation for an eligible industrial activity in respect of that year:

(b) an allocation (other than a provisional allocation for an eligible industrial activity) in respect of the preceding year.

(2) An application under subsection (1) must—

(a) be in the prescribed form; and

(b) contain, as relevant, the applicant's assessment of,—

(i) in the case of an eligible industrial activity, the person's—

(A) provisional allocation entitlement in respect of the year calculated in accordance with section 81:

(B) final allocation entitlement in respect of the previous year calculated in accordance with section 83(2):

(C) annual allocation adjustment relating to the previous year calculated in accordance with section 83(3) or 84(4):

(D) closing allocation adjustment for the year calculated as required under section 84(1)(b):

(ii) in the case of an eligible agricultural activity, the person's—

(A) allocation entitlement in respect of the previous year calculated in accordance with section 85(2); or

(B) if section 85(3) applies, allocation entitlement in respect of the year in which the person ceased to carry out the eligible agricultural activity; and

(c) be accompanied by—

(i) any other information that the EPA may require; and

(ii) the prescribed fee (if any); and

(d) contain the account number of the eligible person's holding account, required by section 61.

Section 86: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86(1): replaced, on 1 January 2013, by section 37 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 86(2)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 86A Provisional allocation to industry in and after 2013

Despite section 86(1)(a), if an eligible industrial activity is prescribed under section 161A(1)(a) in the year 1 January 2013 to 31 December 2013 or in any subsequent year (the **prescribing year**), an eligible person who carried out the activity in the year preceding the prescribing year may apply for a provisional allocation for the eligible industrial activity in respect of the prescribing year in the period—

(a) commencing on the date the regulation prescribing the activity as an eligible industrial activity comes into force; and

(b) ending on the date 3 months after the date in paragraph (a).

Section 86A: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 86B Decisions on applications for allocations of New Zealand units to industry and agriculture

(1) On receipt of an application under section 86, the EPA must decide—

(a) whether the applicant is eligible to receive an allocation in respect of the application:

(b) if in the EPA's opinion the applicant is eligible for an allocation in respect of the application, the number of units the applicant is entitled to be allocated in respect of the application that, if the application relates to a provisional allocation for an eligible industrial activity, must—

(i) include any units to which the person is entitled in respect of an annual allocation adjustment for the previous year; or

(ii) be net of any units required to be deducted from the person's provisional allocation entitlement in accordance with section 83(6)(a).

(2) If the EPA decides under subsection (1) that an applicant is entitled to receive an allocation in respect of the application, then the EPA must—

(a) notify the applicant of—

(i) the number of units the applicant has been allocated in respect of the application and, in the case of an eligible industrial activity, any adjustment to that allocation that the EPA has made under subsection (1); and

(ii) the person's right under section 144 to seek a review of the allocation decision; and

(b) direct the Registrar to transfer to the holding account notified in the person's application the number of units notified under paragraph (a) (as adjusted, in the case of an eligible industrial activity, under subsection (1)).

(3) If the EPA decides under subsection (1) that an applicant is not eligible to receive an allocation in respect of the application, or that the allocation to which the person is entitled in respect of the application is the same as or less than the number of units that the person is liable to repay in respect of an annual allocation adjustment recorded in the application in accordance with section 83(6)(a), then the EPA must notify the applicant of—

(a) the EPA's decision; and

(b) the reasons for the decision; and

(c) if the result of the decision is that the person is liable to repay more units than the number of units to which the person would have been entitled in respect of the application, the number of units in the shortfall; and

(d) the person's right under section 144 to seek a review of the allocation decision.

(4) If a person has failed to notify the EPA of an annual allocation adjustment or a closing allocation adjustment when required by section 83(6)(b) or 84(1)(c)(ii), or if the EPA is satisfied that an annual allocation adjustment or closing allocation adjustment notified by a person to the EPA under section 83(6)(b) or 84(1)(c)(ii) is incorrect, then the EPA may make a decision as to the person's annual allocation adjustment, or closing allocation adjustment or correct annual allocation adjustment or closing allocation adjustment.

(5) The EPA must, as soon as practicable, after deciding an eligible person's final allocation for an eligible activity in respect of a year,—

(a) publish the decision in the *Gazette*; and

(b) ensure it is accessible via the Internet site of the EPA.

(6) For the purposes of subsection (5),—

(a) the final allocation of a person who received a provisional allocation for an eligible industrial activity is the person's provisional allocation for the activity in respect of the year adjusted by the annual allocation adjustment for the activity for the year (or closing allocation adjustment, as the case may be); and

(b) the EPA is not required to publish the final allocation of an eligible person for an eligible activity in respect of a year, or ensure it is accessible via the Internet, if the EPA considers that publishing that information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation.

Section 86B: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86B(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 86C Reconsideration of allocation decisions

(1) Without limiting section 144, the EPA may reconsider, vary, or revoke any decision made under section 86B if in the EPA's opinion the decision has resulted, or would otherwise result, in a person receiving an incorrect allocation because—

(a) of an error in the calculation of the person's entitlement to an allocation or liability to repay units under this subpart; or

(b) the person has provided altered, false, incomplete, or misleading information in or with an application.

(2) The EPA may not make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) after the expiration of 4 years from the end of the year or other period to which the decision relates if the decision, or variation or revocation of the decision, would decrease the number of units allocated to a person.

(3) However, if the EPA is satisfied that a notice under section 83(6)(b) or 84(1)(c)(ii) or application for an allocation, or any other document submitted under section 86, 86E, or 144, was submitted with intent to deceive, the EPA may make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) at any time so as to decrease the number of units allocated to the

person to whom the notice or application related (including decreasing that number to zero).

(4) If the EPA makes a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or varies or revokes a decision under subsection (1), the EPA must, as soon as practicable after doing so, notify the person who gave, or should have given, the notice under section 83(6)(b) or 84(1)(c)(ii) or the applicant, as the case may be, of—

(a) the particulars of the decision, or variation or revocation of the decision; and

(b) any grounds or information upon which the decision or variation or revocation of the decision was based; and

(c) the person's right under section 144 to seek a review of the allocation decision.

(5) If the result of a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4), variation or revocation of an allocation decision under subsection (1), or review under section 144 is that a person allocated units is found to have been allocated and transferred—

(a) units to which the person was not entitled, or to have repaid too few units, the person must within 60 working days of the date of the notice under subsection (4) repay the number of units notified to the person by transferring the units to a Crown holding account designated by the EPA; or

(b) fewer units than the person was entitled to, or to have repaid too many units, the EPA must, as soon as practicable after the date of the notice under subsection (4), direct the Registrar to transfer to the holding account notified in the person's application (or any other holding account notified by the person) the number of New Zealand units recorded in the notice.

(5A) Any additional allocation made under subsection (5)(b) must be excluded from the calculation of the number of New Zealand units that may be allocated for the purpose of a recommendation made under section 30GA(1)(a).

(6) Section 83(7) applies to repayment of units under subsection (5) as if it were repayment under section 83.

Section 86C: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86C(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5)(a): amended, on 1 January 2013, by section 38(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 86C(5)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5A): inserted, on 1 January 2013, by section 38(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 86D Retention of records and materials in relation to allocation

(1) A person who has been allocated New Zealand units for an eligible activity must keep sufficient records to enable the EPA to verify, for any year in respect of which the person received an allocation,—

(a) that the person was an eligible person; and

(b) the person's calculations of the person's entitlement to be allocated New Zealand units or liability to repay units under the relevant subsections in sections 81 to 85; and

(c) the total amount of each product produced by the person from the eligible activity in the year, as determined, if relevant, in accordance with regulations made under this Act; and

(d) any other prescribed information.

(2) The records specified in subsection (1)—

(a) must include—

(i) a copy of any application made to the EPA under section 86 or notice given to the EPA under section 83(6)(b) or 84(1)(c)(ii); and

(ii) any information used to prepare the application or notice; and

(b) must be retained for a period of at least 7 years after the end of the year to which the application or notice relates.

Section 86D: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86D(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86D(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 86E Minister or EPA or chief executive may require further information for purpose of carrying out functions under subpart

(1) For the purposes of making a determination under section 77 or 78 or a decision under section 86B, the Minister or EPA or chief executive, as appropriate, may give to any of the following persons a notice requiring the person to supply information or further information to the Minister or EPA or chief executive:

(a) a person who has made an application for an allocation of New Zealand units or notified an annual allocation adjustment or closing allocation adjustment:

(b) a person who has failed to notify an annual allocation adjustment or closing allocation adjustment as required by section 83(6)(b) or 84(1)(c)(ii):

(c) a person who may be affected by a reconsideration of a determination or decision.

(2) A notice under subsection (1) must be given before the determination or decision is made.

(3) A notice under subsection (1) may require the information to be provided that is necessary to determine whether a person is or was—

(a) eligible for an allocation of New Zealand units; or

(b) entitled to the allocation that the person has applied for or received (in relation to an annual allocation adjustment or a closing allocation adjustment).

(4) The Minister or EPA or chief executive may, as appropriate, for the purpose of verifying whether a determination made under section 77 or 78 or a decision made under section 86B was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under one of those sections, requiring the person to supply to the Minister or EPA or chief executive any records, data, or other information that the person is required to keep in relation to the allocation.

(5) A person who has received a notice under this section must supply the information requested within the period specified in the notice.

(6) A person who fails to comply with a notice under this section within the period specified in the notice, or any further period agreed with the Minister or EPA or chief executive as appropriate, and who—

(a) has applied for an allocation under an allocation plan or under section 86 is not entitled to receive an allocation under that plan or in respect of that application; or

(b) has been allocated but not yet received some or all units allocated to the person under an allocation plan is not entitled to be transferred any units or any further units allocated to the person under the plan.

Section 86E: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86E heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86E(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86E(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86E(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 86F Balance of units at end of true-up period or other balance date

*[Repealed]*

Section 86F: repealed, on 1 January 2013, by section 39 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## Subpart 3—Environmental Protection Authority

Subpart 3 heading: substituted, on 5 December 2011, by section 11 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### *General administrative provisions*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 87 Functions of EPA

(1) The functions of the EPA are to—

(a) keep a register under section 56 of persons who carry out activities and a register of persons who register under section 57 as participants; and

(b) receive and collate the data and other information provided by participants under this Part and Part 5; and

(ba) administer allocations relating to industry and agriculture in accordance with sections 80 to 86E; and

(c) approve the use of unique emissions factors by participants in accordance with section 91; and

(d) direct the Registrar to transfer New Zealand units to which participants are entitled for removal activities to participants' holding accounts; and

(e) ensure participants and eligible persons comply with this Part and Part 5 and to take any action that may be appropriate to enforce those provisions and the provisions of any regulations made under this Part; and

(f) publish information in accordance with section 89; and

(g) issue emissions rulings to help persons meet their obligations under this Part and Part 5.

(2) The EPA must comply with any direction that the Minister gives under section 88(1).

(3) For the avoidance of doubt, the EPA undertakes the functions described in subsection (1) on behalf of the Crown.

Section 87: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 87 heading: amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(1): amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(1)(ba): inserted, on 8 December 2009, by section 33(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 87(1)(d): substituted, on 8 December 2009, by section 33(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 87(1)(e): amended, on 1 January 2013 (applying on and after 8 December 2009, being the commencement date of section 87(1)(ba)), by section 40 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 87(2): amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(3): added, on 5 December 2011, by section 12(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 87A Delegation by EPA

(1) The EPA must not delegate its power to appoint the Registrar under section 11.

(2) In all other respects, section 73 of the Crown Entities Act 2004 applies, except that subsection (1) of that section applies as if paragraph (d) were repealed and the following paragraph substituted:

> (d) a person, or an office holder in a department of the Public Service, approved by the entity's responsible Minister:

Section 87A: inserted, on 5 December 2011, by section 13 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 88 Directions to EPA

(1) The Minister may give general directions to the EPA in relation to the EPA's exercise of powers and performance of functions under this Part, Part 5, or any regulations made under this Part or Part 5.

(2) Subsection (1) does not authorise the Minister to give directions about the exercise of powers and performance of functions in relation to a particular person.

(3) 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 EPA; and
- (c) present a copy of the direction to the House of Representatives.

(4) Before giving a direction under subsection (1), the Minister must comply with section 115(1) of the Crown Entities Act 2004.

Section 88: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 88 heading: amended, on 5 December 2011, by section 14(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(1): amended, on 5 December 2011, by section 14(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(1): amended, on 5 December 2011, by section 14(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(3)(b): amended, on 5 December 2011, by section 14(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(4): added, on 5 December 2011, by section 14(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 89 EPA to publish certain information

(1) The EPA must publish the following information in accordance with subsection (2):

(a) in respect of each activity listed in Schedule 3, the total number of participants—

(i) registered under section 56; and

(ii) removed from the register under section 59; and

(b) in respect of each activity listed in Schedule 4, the total number of participants—

(i) registered under section 57; and

(ii) removed from the register under sections 58(4) and 59; and

(c) the total number and type of activities reported in emissions returns; and

(d) the total quantity of emissions and removals reported in emissions returns; and

(e) subject to subsections (3) and (4), the total quantity of emissions by activity and the total quantity of removals by activity reported in emissions returns; and

(f) the number of participants who failed to comply with their obligation to—

(i) submit an emissions return under section 65(1), 118(2), 189(4), 191, or 193; or

(ii) surrender or repay units under section 65(4), 118(5), 123(3) or (6), 125, 189, 191, or 193; and

(g) the total number of units surrendered; and

(h) the total number of New Zealand units transferred for removal activities; and

(i) the total number of New Zealand units allocated under subpart 2 less any units repaid; and

(j) the total sum of money paid to a Crown Bank Account in accordance with section 178A(2)(a)(ii) or (iii); and

(k) the total sum of money paid by the EPA in accordance with section 178A(2)(b)(ii) or (iii).

(2) The EPA—

(a) must publish the information specified in subsection (1) as soon as practicable after the end of the reporting year; and

(b) may publish the information specified in subsection (1), in whole or in part, at any other time and in whatever manner and format that the EPA considers appropriate.

(2A) In this section, **reporting year** means a 12-month period starting on 1 July of one year and ending with the close of 30 June of the following year.

(3) The EPA is not required to publish the information required under subsection (1)(e) in respect of an activity or the information required under subsection (1)(i) if the EPA is satisfied that publishing the information would result in the disclosure of a participant's individual emissions or an eligible person's own allocation, unless—

(a) the participant or eligible person to whom the information relates has consented to the publication of the information; or

(b) the information is already in the public domain.

(4) The EPA is only required to publish the total quantity of emissions and the total quantity of removals in aggregate for the activities in Part 1 of Schedule 4.

Section 89: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 89 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 89(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 89(1)(e): amended, on 8 December 2009, by section 34(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(1)(i): substituted, on 8 December 2009, by section 34(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(1)(i): amended, on 1 January 2013, by section 41(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(1)(j): inserted, on 1 January 2013, by section 41(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(1)(k): inserted, on 1 January 2013, by section 41(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(2): replaced, on 1 January 2013, by section 41(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(2A): inserted, on 1 January 2013, by section 41(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 89(3): amended, on 8 December 2009, by section 34(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(3): amended, on 8 December 2009, by section 34(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(3)(a): amended, on 8 December 2009, by section 34(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(4): added, on 8 December 2009, by section 34(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 90 EPA may prescribe form of certain documents

(1) The EPA may, for the purposes of this Part and Part 5, prescribe—

(a) the form and electronic format of any forms, applications, returns, information accompanying any applications or returns, or other documents that are not otherwise prescribed in regulations made under this Act; and

(b) different forms or formats for different classes of participants or different activities; and

(c) the manner in which any application, return, information, or other document must be submitted or notified under this Part or Part 5 if this is not otherwise prescribed in regulations.

(2) The EPA must publish any form or format prescribed under subsection (1) via the Internet site of the EPA.

(3) The production by the EPA of any document purporting to be a prescribed form or an extract from a prescribed form or a copy of a form or extract is, in all courts and in all proceedings, unless the contrary is proved, sufficient evidence that the form or electronic format was prescribed.

(4) To avoid doubt, if the EPA prescribes an electronic form or format under subsection (1), the EPA may require any signature on that form or that relates to that format to be an electronic signature.

Section 90: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 90 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 91 Approval of unique emissions factors

(1) The EPA may approve the use by a participant of a unique emissions factor when calculating emissions or removals from an activity under section 62(b) if—

(a) regulations made under section 164 provide a mechanism for participants to apply for approval to use a unique emissions factor for the activity; and

(b) the EPA is satisfied that the unique emissions factor that the participant has applied to use meets any requirements prescribed in regulations made under section 164.

(2) An approval under subsection (1)—

(a) may be subject to the conditions that the EPA considers appropriate; and

(b) ceases to have effect on the earliest of the following dates:

(i) the date of a material change in any of the information or factors on which the approval is based; or

(ii) the date of a material change to this Act or to any regulations to which the approval relates; or

(iii) the date on which any of the conditions to which the approval is subject cease to be met or complied with.

(3) If the EPA approves the use of a unique emissions factor under subsection (1), the EPA must—

(a) notify the applicant of the approval; and

(b) publish in the *Gazette*—

(i) the name of the participant; and

(ii) a description of the activity; and

(iii) the details of the unique emissions factor the EPA has approved the participant to use when calculating emissions or removals for the activity.

Section 91: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 91(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(3)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 92 Recognition of verifiers

(1) The EPA may, in accordance with any regulations made under section 163, recognise a person or organisation with the prescribed expertise, technical competence, or qualifications as a person or organisation that may undertake verification functions for the purposes of section 62(a) and (c) or regulations made under section 164 relating to the process for approval of a unique emissions factor.

(2) A person or organisation may be recognised by the chief executive as able to verify information or unique emissions factors in respect of—

(a) 1 or more types of data or information or calculations of types of emissions or removals:

(b) 1 or more activities in Schedule 3 or 4.

(3) The EPA may suspend or revoke any recognition given under this section in accordance with regulations made under section 163.

Section 92: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 92(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 92(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

*Verification and inquiry*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 93 Appointment of enforcement officers

(1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this Part.

(2) If the EPA delegates the power to appoint a person as an enforcement officer to the chief executive of a department of the Public Service, the chief executive of the department may appoint a person as an enforcement officer only if the person is employed by a government department, in which case the chief executive must employ the person under the State Sector Act 1988.

(3) The EPA must supply each enforcement officer with a warrant of authorisation that clearly states the powers and functions of the officer.

(4) An enforcement officer who exercises, or purports to exercise, a power conferred on the enforcement officer under this Act must carry and produce, if required to do so,—

(a) his or her warrant of authorisation; and

(b) evidence of his or her identity.

(5) An enforcement officer must, on the termination of the enforcement officer's appointment, surrender his or her warrant to the chief executive.

(6) *[Repealed]*

Section 93: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 93(1): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(2): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(3): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(6): repealed, on 5 December 2011, by section 15(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 94 Power to require information

(1) The EPA, the chief executive, or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of—

(a) ascertaining whether a person is complying, or has complied, with this Part and Part 5; or

(b) ascertaining whether the EPA or the chief executive, as appropriate, should exercise any powers under this Part or Part 5.

(2) The information required to be provided under subsection (1) must,—

(a) if required by the EPA, the chief executive, or an enforcement officer, be accompanied by a statutory declaration attesting to the truthfulness of the information provided; and

(b) be provided—

(i) in the form specified by the EPA, the chief executive, or an enforcement officer; and

(ii) within any reasonable time specified in the notice requiring the information; and

(iii) free of charge.

Section 94: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 94(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 94(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 94(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 94(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 95 Power to inquire

(1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of this Part or Part 5, the EPA or the chief executive may require a person to—

(a) appear before the EPA, or the chief executive, or an enforcement officer at a time and place that is specified in the notice to give evidence; and

(b) produce any document or class of documents in the person's possession or under the person's control that is specified in the notice.

(2) The EPA, or the chief executive, or enforcement officer may require the evidence to be given on oath and either orally or in writing, and for that purpose the EPA, or the chief executive, or enforcement officer may administer an oath.

Section 95: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 95(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 95(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 95(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 96 Inquiry before District Court Judge

(1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of this Part or Part 5, the EPA or the chief executive, if the EPA or the chief executive, as appropriate, considers it necessary, may apply in writing to a District Court Judge to hold an inquiry under this section.

(2) For the purposes of an inquiry under this section,—

(a) the District Court Judge—

(i) may, with respect to any matter that is relevant to the subject matter of the inquiry, summon and examine on oath all persons whom the EPA, the chief executive, or any other interested person requires to be called and examined; and

(ii) has the same jurisdiction and authority regarding the summoning and examination of a person as the Judge would have in respect of a witness in a civil action within the Judge's ordinary jurisdiction; and

(b) the person summoned and examined has all the rights and is subject to all the liabilities that the person would have and be subject to if the person were a witness in a civil action within the Judge's ordinary jurisdiction.

(3) The EPA, the chief executive, and any person materially affected by the subject matter of the inquiry may be represented by a barrister or solicitor, who may examine, cross-examine, and re-examine, in accordance with ordinary practice, any person summoned under subsection (2).

(4) Every examination under this section must take place in chambers.

(5) The statement of every person examined—

(a) must be—

(i) recorded in writing and signed by the person in the presence of the District Court Judge; and

(ii) delivered to the chief executive; and

(b) does not form part of the records of the court.

Section 96: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 96(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 96(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 96(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 97 No criminal proceedings for statements under section 95 or 96

(1) No person summoned or examined under section 95 or 96 is excused from answering a question on the ground that the answer may incriminate the person or render the person liable to any penalty or forfeiture.

(2) The testimony of a person examined is not admissible as evidence in criminal proceedings against the person, except on a charge of perjury in relation to the testimony.

Section 97: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 98 Expenses in relation to inquiries

The EPA or the chief executive may pay, or a District Court Judge may order the EPA or the chief executive to pay, to any person who has appeared before the EPA, or the chief executive, or an enforcement officer under section 95 or the District Court Judge under section 96 the sum that in the EPA's, or the chief executive's, or the Judge's opinion, as the case may be, is reasonable in respect of that person's travelling and other expenses.

Section 98: substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 99 Obligation to maintain confidentiality

(1) This section applies—

(a) to the chief executive, the EPA, an enforcement officer, and any other person who performs functions or exercises powers of the chief executive, the EPA, or an enforcement officer under this Part and Part 5; and

(b) at the time during which, and any time after which, those functions are performed or those powers are exercised.

(2) A person to whom this section applies—

(a) must keep confidential all information that comes into the person's knowledge when performing any function or exercising any power under this Part and Part 5; and

(b) may not disclose any information specified in paragraph (a), except—

(i) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or

(ii) to the extent that the information is already in the public domain; or

(iii) for the purposes of, or in connection with, the exercise of powers conferred by this Part or for the administration of this Act; or

(iiia) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or

(iv) as provided under this Act or any other Act; or

(v) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or

(vi) for the purpose of complying with any obligation under the Convention or the Protocol.

(3) A person to whom this section applies commits an offence under section 130 if the person knowingly contravenes this section.

(4) Nothing in subsection (2) may be treated as prohibiting the chief executive or the EPA from—

(a) providing or publishing general guidance in relation to the operation of this Part and Part 5; or

(b) with the prior approval of the Minister, preparing and supplying statistical information to any person in a form that does not identify any individual; or

(c) providing information to any person about whether any forest land is considered by the chief executive or the EPA to be pre-1990 forest land, pre-1990 offsetting forest land, or post-1989 forest land, or has been declared to be exempt land by the chief executive or the EPA.

Section 99: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 99(1)(a): substituted, on 5 December 2011, by section 16(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(2)(b)(iii): amended, on 5 December 2011, by section 16(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(2)(b)(iiia): inserted, on 5 December 2011, by section 16(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(2)(b)(vi): amended, on 1 January 2013, by section 42(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 99(4): amended, on 5 December 2011, by section 16(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(4)(c): amended, on 1 January 2013, by section 42(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 99(4)(c): amended, on 5 December 2011, by section 16(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 100 Power of entry for investigation

(1) An enforcement officer may enter land or premises (excluding any dwellinghouse or marae) at any reasonable time during the ordinary hours of business to investigate whether a person is complying with this Part or Part 5.

(2) During an investigation, an enforcement officer may—

(a) require the production of, inspect, and copy any documents:

(b) take samples of water, air, soil, organic matter, or any other thing:

(c) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises):

(d) demand from the occupier any other information that the enforcement officer may reasonably require for the purpose of determining whether a person is complying with this Part and Part 5.

(3) An enforcement officer who exercises the power of investigation under this section must give the occupier or owner reasonable notice of the enforcement officer's intention to enter the land or premises, unless doing so would defeat the purpose of the entry.

(4) A notice given under subsection (3) must specify—

(a) when entry is to be made; and

(b) the purpose for which the entry is required; and

(c) that the entry is authorised under this section.

(5) An enforcement officer who exercises the power of investigation under this section may be accompanied by any person or persons reasonably necessary to assist the enforcement officer with the investigation.

(6) A person who provides assistance under subsection (5) may exercise the powers provided to enforcement officers under subsection (2)(a) to (c).

(7) Nothing in this section limits the privilege against self-incrimination.

Section 100: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 100(1): amended, on 8 December 2009, by section 35 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 101 Applications for warrants

(1) A District Court Judge, Justice of the Peace, Community Magistrate, or Registrar of any court who, on written application made on oath by an enforcement officer authorised by the EPA, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, dwellinghouse, or marae any documents or other records or things (including

samples) that may be evidence of the commission of an offence under section 129, 132, or 133 may issue a warrant authorising the entry and search of the land, premises, dwellinghouse, or marae.

(2) Every search warrant may authorise the enforcement officer executing the warrant to do any of the following things:

(a) enter and search the land, premises, dwellinghouse, or marae, at any time that is reasonable in the circumstances during the ordinary hours of business, within—

(i) 10 working days of the date of the warrant; or

(ii) if the Judge or other person issuing the warrant is satisfied that special circumstances justify a longer period, any period of up to 20 working days that is specified in the warrant:

(b) seize any document or other thing that the enforcement officer has reasonable cause to suspect may be evidence of the commission of an offence under section 129, 132, or 133:

(c) take samples of water, air, soil, organic matter, or any other thing:

(d) use the assistance of any person that is reasonably necessary in the circumstances:

(e) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances:

(f) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises).

(3) An enforcement officer may not enter a dwellinghouse or marae unless that enforcement officer is accompanied by a constable.

(4) A person who provides assistance under subsection (2)(d) may exercise the powers provided to enforcement officers under subsection (2)(a), (b), (c), and (f).

Section 101: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 101(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 101(2)(a)(i): amended, on 1 January 2013, by section 43(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 101(2)(a)(ii): amended, on 1 January 2013, by section 43(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 101(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### 102 Proof of authority must be produced

If powers are exercised under section 100 or 101, an enforcement officer must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection—

(a) the enforcement officer's warrant of authorisation and evidence of his or her identity; and

(b) any notice given under section 100(3) or a search warrant issued under section 101, as the case may be.

Section 102: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 103 Notice of entry

(1) If, when powers are exercised under section 100 or 101, the occupier is not present, the enforcement officer must, in a prominent place, attach a written notice that states—

(a) the date and time of the entry or search; and

(b) the purpose of the entry or search; and

(c) the name and phone number of the enforcement officer; and

(d) the right, under the Official Information Act 1982, to access documentation relating to the application for a search warrant and the exercise of the search power; and

(e) an address at which inquiries may be made.

(2) If the enforcement officer removes, or has removed, any document or other thing from any land, premises, dwellinghouse, or marae, the enforcement officer must hand to the occupier, or attach in a prominent place, a notice that—

(a) lists all of the items taken; and

(b) states—

(i) where those items are being held; and

(ii) if they are being held in 2 or more places, which items are being held at which place; and

(c) provides information about—

(i) the procedures to be followed to initiate a claim that privileged or confidential material has been seized; and

(ii) access to and the disposition of seized items.

Section 103: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 104 Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5

No document or other information obtained from a person under section 100 or 101 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of an obligation imposed under this Part or Part 5.

Section 104: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 105 Return of items seized

Section 199 of the Summary Proceedings Act 1957 applies, with the necessary modifications, to any property seized or taken by an enforcement officer as if—

(a) references in that section to a constable were references to an enforcement officer; and

(b) the reference in that section to section 198 of that Act were a reference to section 100 or 101 of this Act.

Section 105: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 106 Protection of persons acting under authority of this Part

No enforcement officer or person called upon to assist an enforcement officer who does an act, or omits to do an act, when performing a function or exercising a power conferred on that person by this Part is under any civil or criminal liability in respect of the act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

Section 106: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## *Emissions rulings*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 107 Applications for emissions rulings

(1) A person may apply to the EPA for an emissions ruling in respect of 1 or more of the following matters:

(a) whether something that the person—

(i) is doing is an activity listed in Schedule 3 or 4; or

(ii) proposes to do would be an activity listed in Schedule 3 or 4:

(b) whether the person is a participant in respect of an activity listed in Schedule 3 or is eligible to register as a participant in respect of an activity listed in Schedule 4:

(c) the correct application of any provision contained in regulations made under section 163(1)(a) to (c) in respect of a particular matter specified in the person's application:

(d) any other matters prescribed in regulations made under section 168(1)(b).

(2) Every application under subsection (1) must—

(a) be in the prescribed form; and

(b) state the name and address of the applicant; and

(c) specify the matter on which the applicant seeks a ruling; and

(d) specify the applicant's opinion as to what the ruling should be; and

(e) contain, or have attached, all information that is relevant to a proper consideration of the application; and

(f) be accompanied by the prescribed fee (if any).

(3) The EPA may request any further information from an applicant that the EPA considers necessary to assist in the consideration of the application.

Section 107: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 107(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 107(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 108 Matters in relation to which EPA may decline to make emissions rulings

(1) The EPA may not make an emissions ruling—

(a) with respect to a provision that authorises or requires the EPA to—

(i) impose or remit a penalty; or

(ii) inquire into the correctness of any return or other information supplied by any person; or

(iii) prosecute any person; or

(iv) recover any debt owing by any person; or

(b) if the information submitted with the application for the ruling, including (but not limited to) information submitted under section 107(3), raises questions of fact that the EPA would need to determine in order to make the ruling.

(2) The EPA may decline to make an emissions ruling if—

(a) the EPA considers that the correctness of the ruling would depend on which assumptions were made about a future event or other matter; or

(b) the matter on which the ruling is sought is subject to a review or appeal, or is the subject of proceedings, whether in relation to the applicant or any other person; or

(c) the applicant has outstanding unpaid fees relating to an earlier emissions ruling application; or

(d) the EPA considers the application is frivolous or vexatious; or

(e) the matter on which the ruling is sought concerns an obligation to surrender units that are already due and payable, unless the application is received before the obligation arises; or

(f) an assessment or amendment relating to the same person, activity, and period to which the proposed ruling would apply has been made (unless the application is received by the EPA before the date an assessment or amendment is made); or

(g) in the EPA's opinion—

(i) the EPA has insufficient information to make the ruling; or

(ii) it would be unreasonable to make a ruling in view of the resources available to the EPA.

Section 108: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 108 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1): substituted, on 8 December 2009, by section 36 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 108(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 109 Making of emissions rulings

(1) The EPA must make an emissions ruling regarding the matter in respect of which a ruling is sought under section 107 as soon as practicable after the receipt of—

(a) a properly completed application for a ruling; and

(b) all information that the EPA considers relevant to the consideration of the application, including information requested under section 107(3).

(2) Subject to section 114(2), a ruling comes into effect on the day on which it is made.

(3) A ruling may be made subject to any conditions that the EPA considers appropriate.

(4) Subsection (1) is subject to section 108.

Section 109: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 109(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 109(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 109(3): amended, on 1 January 2013, by section 44 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 110 Notice of emissions rulings

The EPA must, as soon as practicable, notify the applicant of—

(a) an emissions ruling, together with the reasons for the ruling, and the conditions (if any) to which the ruling is subject; or

(b) a decision to decline to make an emissions ruling, together with the reasons for the decision.

Section 110: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 110: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 111 Confirmation of basis of emissions rulings

At any time after an emissions ruling is made, the EPA may, by notice, require an applicant to satisfy the EPA, within 20 working days of receipt of the notice, and in a manner that the EPA considers appropriate, that—

(a) the information on which the emissions ruling is based remains accurate; and

(b) the conditions (if any) to which the ruling is subject, have been, and continue to be, complied with.

Section 111: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 111: amended, on 1 January 2013, by section 45 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 111: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 112 Notifying EPA of changes relevant to or failure to comply with emissions rulings

(1) A person must, as soon as practicable, notify the EPA of any material change that is relevant to the application if the person—

(a) has made an application for an emissions ruling under section 107; and

(b) becomes aware of a material change relating to the application before the emissions ruling is made by the EPA.

(2) A person who has obtained an emissions ruling under section 109 must, as soon as practicable, notify the EPA of—

(a) any material change that is relevant to the ruling:

(b) any failure to comply with any of the conditions of the ruling.

(3) The notification that a person provides under subsection (1) or (2) must state the date on which the person became aware of the material change or the failure to comply.

Section 112: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 112 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 113 Correction of emissions rulings

(1) The EPA may amend an emissions ruling to correct any error that the EPA is satisfied is contained in the ruling.

(2) The EPA must, as soon as practicable after making a correction, notify the applicant of the corrected ruling.

(3) The correction to a ruling applies to the applicant from the date on which notice of the corrected ruling is given to the applicant.

(4) Despite subsection (3), if the corrected ruling has the effect of—

(a) increasing the number of units that a person is required to surrender, or decreasing the number of New Zealand units that a person is entitled to receive, in respect of a year, then the ruling as given prior to correction under this section must be applied to that year; or

(b) decreasing the number of units that a person is required to surrender, or increasing the number of New Zealand units that a person is entitled to receive, in respect of a year, then the corrected ruling must be applied to that year.

Section 113: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 113(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 113(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 114 Cessation of emissions rulings

(1) An emissions ruling ceases to have effect on the earliest of the following dates:

(a) the date of a material change in any of the information or facts on which the ruling is based; or

(b) the date of a material change to this Act or to any regulations relevant to the ruling; or

(c) the date on which any of the conditions to which the ruling is subject cease to be met or complied with; or

(d) the date of a failure to satisfy the requirements of the EPA under section 111.

(2) An emissions ruling does not come into effect if any information on which it is based is not accurate in all material respects.

Section 114: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 114(1)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 115 Appeal from decisions of EPA

(1) An applicant who is dissatisfied with an emissions ruling, or a decision to decline to make an emissions ruling, may, within 20 working days of the date on which notice of the ruling or decision is given, appeal to the District Court against the ruling or decision.

(2) The District Court may confirm, reverse, or modify the emissions ruling or decision appealed against.

(3) An emissions ruling or decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

Section 115: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 115 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 115(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 115(1): amended, on 1 January 2013, by section 46 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 116 Effect of emissions rulings

(1) An emissions ruling is conclusive evidence of the determination of the matter in respect of which a ruling is sought under section 107.

(2) If the EPA makes an emissions ruling under section 109,—

(a) the ruling applies to the matter in relation to which the ruling was sought; and

(b) if the applicant complies with the ruling, the EPA must apply this Act to that matter in accordance with the ruling.

(3) This section is subject to sections 113 and 114 and any decision of the District Court under section 115(2).

Section 116: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 116(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 116(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 117 EPA may publish certain aspects of emissions rulings

(1) For the purpose of providing general guidance about the application of this Part or Part 5, the EPA may, after making an emissions ruling, publish information that relates to the ruling.

(2) The EPA may not publish any information under subsection (1) that identifies any person to whom the ruling relates.

(3) No person may treat, or rely on, the information published under subsection (1) as an emissions ruling with the effect specified by section 116.

Section 117: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 117 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 117(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 117(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## *Emissions returns*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 118 Submission of final emissions returns

(1) Subsection (2) applies to the following persons:

(a) a person who the EPA believes is about to—

(i) cease carrying out an activity listed in Schedule 3 or 4 in relation to which the person is a participant; and

(ii) leave New Zealand:

(b) a participant who has ceased to carry out any activities in New Zealand:

(ba) a participant who has given the EPA notice under section 59 that the participant has ceased, or will cease, to carry out any activities for the remainder of the year and the whole of the following year:

(c) the executors or administrators of a deceased participant:

(d) a participant who has become bankrupt or has been put into liquidation.

(2) The EPA may, at any time, require a person to whom subsection (1) applies to submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4.

(3) Any of the following persons may, at any time, submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4:

(a) a person who has—

(i) ceased to carry out an activity listed in Schedule 3 or 4 in relation to which the person was a participant; and

(ii) left, or is about to leave, New Zealand:

(b) a participant who has ceased to carry out any activities in New Zealand:

(c) the executor or administrator of a deceased participant:

(d) a participant who has become bankrupt or has been put into liquidation.

(4) A final emissions return submitted under subsection (2) or (3) must—

(a) contain all of the information required in an annual emissions return under section 65(2), but only in respect of the following periods, as relevant:

(i) if the return is submitted in response to a requirement of the EPA under subsection (2), the period specified by the EPA:

(ii) if the return is made under subsection (3)(a) or (b), the period—

(A) beginning on the later of 1 January in the year in which the return is submitted, or the day after the end of the period covered by the last emissions return submitted by the person for the activity; and

(B) ending on the day the person ceased to carry out the specified activity, or the last of the specified activities covered by the return:

(iii) if the return is made under subsection (3)(c) or (d), the period determined by the submitter; and

(b) be submitted in accordance with section 65(3).

(5) Following the submission of a final emissions return under this section, the person submitting the return must, within 20 working days, surrender the number of units in the assessment under section 65(2)(c)(i).

(6) Despite anything in subsection (3),—

(a) a person who meets the conditions in that subsection, and who is (at the time of meeting those conditions) a member of a consolidated group, may not submit a final emissions return; and

(b) the nominated entity of the consolidated group of which the person is a member may not submit a final emissions return in respect of the person.

(7) To avoid doubt, a person who submits a final emissions return in respect of a specified activity under this section—

(a) is not required to submit an annual emissions return under section 65 that covers the activity for any period covered by the return submitted under this section; but

(b) must, if the final emissions return does not cover the full period in which the activity was carried out by the participant in a year, submit an annual emissions return under section 65 in respect of the activity that covers any part of the year in which the activity was carried out by the participant that is not covered by the return submitted under this section.

Section 118: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 118(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(1)(ba): inserted, on 1 January 2013, by section 47 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 118(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(3)(a): substituted, on 8 December 2009, by section 37(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(4)(a): substituted, on 8 December 2009, by section 37(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(4)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(6): added, on 8 December 2009, by section 37(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(7): added, on 8 December 2009, by section 37(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 119 Power to extend date for emissions returns

The EPA may extend the time for the submission of an emissions return by a period of no more than 20 working days if—

(a) the participant has applied for an extension by the date upon which the emissions return is due; and

(b) the EPA is satisfied that the participant is unable to submit the required emissions return by the due date.

Section 119: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 119: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 119(a): amended, on 8 December 2009, by section 38 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 119(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 120 Amendment to emissions returns by EPA

Subject to section 127, if the EPA is satisfied that the information contained in an emissions return is incorrect, the EPA may, at any time, amend the emissions return and any assessment of the participant's liability to surrender units or entitlement to receive New Zealand units in the emissions return as the EPA thinks fit.

Section 120: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 120 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 120: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 121 Assessment if default made in submitting emissions return

(1) This section applies if—

(a) a participant fails to submit an emissions return when required to do so under this Act; or

(b) the EPA has reason to believe that a person is a participant who should have submitted an emissions return, but did not.

(2) If this section applies, the EPA may make an assessment of the matters that should have been in the person's emissions return.

Section 121: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 121(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 121(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 122 Amendment or assessment presumed to be correct

An amendment made to an emissions return under section 120, or an assessment made under section 121, must be taken to be correct unless, on review or appeal, a different amendment or assessment is made.

Section 122: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 123 Effect of amendment or assessment

(1) If the EPA makes an amendment under section 120 or an assessment under section 121, the EPA must, as soon as practicable after making the amendment or assessment, notify the participant of—

(a) the particulars of the amendment or assessment; and

(b) any grounds or information upon which the amendment or assessment was based; and

(c) the right of the person to seek a review of the decision under section 144.

(2) A notice under subsection (1) must, if relevant, be accompanied by a penalty notice under section 134(3)(b).

(3) If the amendment or assessment results in a liability for the person to surrender units or any additional units, the participant must surrender those units within 60 working days of the date of the notice under subsection (1).

(4) If the amendment shows that a participant has surrendered too many units, the EPA must, within 20 working days of the date of the notice under subsection (1), arrange for reimbursement to the participant, in accordance with section 124, of the number of units incorrectly surrendered.

(5) If the amendment or assessment results in an entitlement for a participant to receive New Zealand units for the participant's removal activities, the EPA must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant's holding account.

(6) If the amendment shows that a participant was transferred too many New Zealand units for the participant's removal activities, the participant must, within 60 working days of the date of the notice under subsection (1), repay the number of units to which the amendment shows the participant was not entitled by transferring them to a Crown holding account designated by the EPA.

(7) Units repaid by any person under subsection (6) must be of a type that may be transferred to a surrender account at the time the unit is repaid.

(8) The EPA is not required to meet the time frame in subsection (4) if consultation under section 124(3) on the units to be reimbursed makes this impracticable.

Section 123: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 123(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(3): amended, on 1 January 2013, by section 48(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(4): amended, on 1 January 2013, by section 48(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(5): substituted, on 8 December 2009, by section 39 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 123(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(6): amended, on 1 January 2013, by section 48(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(8): amended, on 1 January 2013, by section 48(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(8): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 124 Reimbursement of units by EPA

(1) If the EPA is required to arrange for the reimbursement of units to a person under section 123(4), 126(2), 138(2), 186H(4), or 189(7), the EPA must direct the Registrar to transfer units to the person in accordance with subsection (2).

(2) If the reimbursement is of—

(a) New Zealand units or approved overseas units, the EPA must direct the Registrar to transfer the applicable number of New Zealand units or approved overseas units from the appropriate surrender account or Crown holding account to the person's holding account; or

(b) Kyoto units, the EPA must direct the Registrar to transfer the applicable number and type of Kyoto units from the appropriate surrender account or Crown holding account to the person's holding account.

(3) The EPA must take into account the views of the person to whom units will be reimbursed about the type of units to be reimbursed when determining what units to reimburse.

Section 124: substituted, on 8 December 2009, by section 40 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 124 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 124(1): amended, on 1 January 2013, by section 49 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 124(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 124(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 124(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 124(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 125 Repayment of units by persons in case of error

(1) The EPA may, if satisfied that as a result of an error, units to which a person is not entitled under a provision in Part 4 or 5 have been transferred from a Crown holding account or other account held by the Crown to the person's holding account, give a notice to the person requiring that person to repay the units referred to in the notice in accordance with subsection (2).

(2) A person who receives a notice under subsection (1) must—

(a) repay any units transferred in error that are still in the person's holding account, or are otherwise under the person's control, by transferring those units as soon as practicable to the Crown holding account designated in the notice; and

(b) if not all the units transferred in error are repaid under paragraph (a), repay, within 30 working days of the date of the notice, the outstanding number of units by transferring units to the Crown holding account designated in the notice.

(3) Units repaid by any person under subsection (2)(b) must be of a type that may be transferred to a surrender account at the time the unit is repaid.

Section 125: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 125(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 125(1): amended, on 8 December 2009, by section 41 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 126 Obligation to surrender or repay units not suspended by review or appeal

(1) The obligation to surrender or repay units under section 123 or 125 is not suspended by any review or legal proceedings.

(2) If the applicant for a review or the appellant in proceedings is successful in the review or the proceedings, the EPA must arrange for the reimbursement to the applicant or appellant of the number of units surrendered or repaid in excess of those that are determined to be required to be surrendered or repaid.

(3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed by the EPA under section 146.

Section 126: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 126(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 126(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 127 Time bar for amendment of emissions returns

(1) If a participant has complied with the participant's obligation to surrender units in relation to an emissions return submitted under—

(a) any section except section 189 or 193, the EPA may not amend the emissions return, or the assessment made by the participant of the units to be surrendered or received, after the expiration of 4 years from the end of the year or other period in respect of which the emissions return was made, or in the case of a return under section 187 or 191, from the date of the submission of the emissions return, if the amendment would—

(i) increase the number of units required to be surrendered by the participant; or

(ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities:

(b) section 189 or 193, the EPA may not amend the emissions return, or the assessment made by the participant of the units to be surrendered or received, after the expiration of 7 years from the end of the year or other period in respect of which the emissions return was made if the amendment would—

(i) increase the number of units required to be surrendered by the participant; or

(ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities.

(2) However, if the EPA is satisfied that an emissions return was fraudulent, was wilfully misleading, or deliberately omitted mention of emissions or removals in respect of which an emissions return was required to be submitted, the EPA may amend the emissions return at any time, under section 120, so as to—

(a) increase the number of units required to be surrendered by the participant:

(b) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.

Section 127: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 127(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 127(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 127(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 128 Amendments and assessments made by electronic means

Any amendment or assessment made by the EPA for the purpose of this Act that is made automatically by a computer or other electronic means in response to or as a result of information entered or held in the computer or other electronic medium—

(a) must be treated as an amendment or assessment made by or under the properly delegated authority of the EPA; and

(b) is not invalid by virtue of the fact that it is made automatically by such means.

Section 128: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 128: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 128(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## Subpart 4—Offences and penalties

Subpart 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 129 Offences in relation to failure to comply with various provisions

(1) A person commits an offence against this Act if the person—

(a) is a participant in any year and, without reasonable excuse, fails to comply with section 62 (requirement to collect data or other information, calculate emissions and removals, and keep records); or

(b) without reasonable excuse,—

(i) fails to notify the EPA under section 56 that the person is carrying out an activity listed in Schedule 3; or

(ii) fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or

(iia) fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or closing allocation adjustment under section 83 or 84, including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or

(iii) fails to keep records as required—

(A) under section 67 or 86D; or

(B) by a fishing allocation plan; or

(C) by a pre-1990 forest land allocation plan; or

(iv) fails to notify the EPA of a matter that is required to be notified under section 112; or

(v) fails to notify the EPA, within the time required, of a matter required to be notified under section 84(2)(b) or 192(3).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) the first time the person is convicted of that offence, to a fine not exceeding $8,000:

(b) the second time the person is convicted of that offence, to a fine not exceeding $16,000:

(c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding $24,000.

Section 129: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 129 heading: replaced, on 1 January 2013, by section 50 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 129(1)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(iia): inserted, on 8 December 2009, by section 42(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(iia): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(iii): substituted, on 8 December 2009, by section 42(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(iv): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(v): substituted, on 8 December 2009, by section 42(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(v): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 130 Offence for breach of section 99

Every person to whom section 99(1) applies who knowingly acts in contravention of section 99 commits an offence and is liable on conviction to—

(a) imprisonment for a term not exceeding 6 months; or

(b) a fine not exceeding $15,000; or

(c) both.

Section 130: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 130: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 131 Offence for failure to provide information or documents

(1) A person commits an offence against this Act if the person, without reasonable excuse,—

(a) fails to provide information to the EPA or an enforcement officer when required to do so under section 94; or

(b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 95.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $12,000; or

(b) in the case of a body corporate, to a fine not exceeding $24,000.

Section 131: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 131(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 131(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 131(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 132 Other offences

(1) A person commits an offence against this Act if the person—

(a) refuses to take an oath when required to do so under section 95; or

(b) refuses to answer any question when required to do so under section 95; or

(c) is a participant in any year and knowingly fails to comply with section 62 (requirement to collect data or other information, calculate emissions and removals, and keep records); or

(d) knowingly fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or

(da) knowingly fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84, including when required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or

(e) knowingly fails to keep records as required—

(i) under section 67 or 86D; or

(ii) by a fishing allocation plan; or

(iii) by a pre-1990 forest land allocation plan; or

(f) knowingly provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of any matter in this Part or Part 5; or

(g) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or Part 5; or

(h) wilfully interferes with any survey, investigation, test, or measurement carried out by an enforcement officer or a person assisting an enforcement officer under section 100; or

(i) refuses to provide information that an enforcement officer has demanded from that person under section 100(2)(d).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $25,000; or

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 132: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 132(1)(da): inserted, on 8 December 2009, by section 43(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 132(1)(da): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 132(1)(e): substituted, on 8 December 2009, by section 43(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 132(1)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 132(1)(f): amended, on 8 December 2009, by section 43(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 132(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 133 Evasion or similar offences

(1) A person commits an offence against this Act if the person, with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,—

(a) fails to comply with any of the requirements specified in section 62; or

(b) fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or

(ba) fails to comply with the requirements relating to calculation and application for or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84 (including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c)); or

(c) fails to keep records as required—

(i) under section 67 or 86D; or

(ii) by a fishing allocation plan; or

(iii) by a pre-1990 forest land allocation plan; or

(d) fails to provide information to the EPA or any other person when required to do so under this Part or Part 5; or

(e) provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of a matter in this Part and Part 5.

(2) Every person who commits an offence against subsection (1) is liable on conviction to—

(a) imprisonment for a term not exceeding 5 years; or

(b) a fine not exceeding $50,000; or

(c) both imprisonment and a fine.

Section 133: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 133(1)(ba): inserted, on 8 December 2009, by section 44(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(1)(ba): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(c): substituted, on 8 December 2009, by section 44(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(1)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(e): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(e): amended, on 8 December 2009, by section 44(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 134 Penalty for failing to surrender or repay units

(1) This section applies if—

(a) a person fails to surrender units by the due date when required to do so under section 65(4), 118(5), 189, 191, or 193; or

(b) an amendment to an emissions return under section 120 or an assessment made under section 121 results in a liability for a person—

(i) to surrender units or additional units under section 123(3); or

(ii) to repay units in accordance with section 123(6); or

(c) a person is required under section 125 to repay units transferred in error.

(2) Subject to section 135, if this section applies, the person is liable to—

(a) surrender or repay the units as required under the relevant section; and

(b) pay to the EPA an excess emissions penalty of $30 for each unit that,—

(i) if subsection (1)(a) applies, the person fails to surrender by the due date; or

(ii) if subsection (1)(b) applies, the person is required to surrender under section 123(3) or repay under section 123(6); or

(iii) if subsection (1)(c) applies, the person fails to repay by the due date.

(3) If a person is liable to an excess emissions penalty under subsection (2), the EPA must give a notice to the person that,—

(a) if subsection (1)(a) or (c) applies,—

(i) refers to the person's failure to surrender units by the due date as required under section 65(4), 118(5), 189, 191, or 193, as applicable, or repay units by the due date under section 125; and

(ii) sets out the number of units required to be surrendered or repaid; and

(iii) sets out the amount of the excess emissions penalty to which the person is liable under subsection (2)(b); and

(iv) requires the person to surrender or repay the units specified in subparagraph (ii), and pay the penalty specified in subparagraph (iii) to the EPA, within 20 working days of the date of the notice; and

(v) advises that, unless both the units are surrendered or repaid and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137; or

(b) if subsection (1)(b) applies,—

(i) refers to the relevant notice under section 123(1); and

(ii) sets out the amount of the excess emissions penalty to which the person is liable under subsection (2)(b); and

(iii) requires the person to pay the penalty specified in subparagraph (ii) within the period in which the person must surrender units under section 123(3) or repay units under section 123(6); and

(iv) advises that, unless both the units are surrendered or repaid and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137.

(4) The amount of the excess emissions penalty, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

Section 134: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 134(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 134(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 134(3)(a)(iv): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 134(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 134A Penalty for failing to surrender or repay units when required by notice given under section 134(3)

(1) This section applies if a person fails to surrender or repay units when required by a notice given under section 134(3).

(2) If this section applies, the person is liable to—

(a) surrender or repay the units as required under the notice; and

(b) pay to the EPA an excess emissions penalty of $30 for each unit that the person has failed to surrender or repay by the due date specified in the notice given under section 134(3).

(3) If a person is liable to an excess emissions penalty under subsection (2), the EPA must give a notice to the person that—

(a) refers to the person's failure to surrender or repay units by the due date specified in the notice given under section 134(3); and

(b) sets out the number of units required to be surrendered or repaid; and

(c) sets out the amount of the further excess emissions penalty that the person is liable to surrender or repay under this section (if any); and

(d) requires the person to surrender or repay the units specified in paragraph (b), and pay the penalty specified in paragraph (c) to the EPA, within 20 working days of the date of the notice; and

(e) advises that, unless the units are surrendered or repaid and the further penalty is paid in full by the due date, interest on the amount of the further penalty will accrue in accordance with section 137.

(4) To avoid doubt, any liability to surrender or repay units or to pay a penalty under subsection (2) is additional to, and does not affect, the liability of a person to surrender or repay units under any other section of this Act or to pay a penalty under a penalty notice given by the EPA under section 134.

(5) The amount of the excess emissions penalty and any interest that accrues on that penalty constitute a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

Section 134A: inserted, on 1 January 2013, by section 51 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 135 Reductions in penalty

(1) The EPA may reduce the excess emissions penalty imposed by section 134(2)(b)(i) or (iii) by up to 100%, if the person voluntarily discloses the failure to surrender or repay units before receiving a penalty notice under section 134.

(1A) The EPA may reduce the excess emissions penalty imposed by section 134A(2)(b) for a liability incurred under section 134(2)(b)(i) or (iii) by up to

100% if the person voluntarily discloses the failure to surrender or repay units before receiving a penalty notice under section 134A.

(2) The EPA may reduce the excess emissions penalty imposed by section 134(2)(b)(ii) or 134A(2)(b) for a liability incurred under section 134(2)(b)(ii) by up to 100%, if—

(a) the person voluntarily disclosed that an emissions return submitted by the person contained incorrect information, or that the person failed to file a return when required to do so, before the EPA or an enforcement officer—

(i) requested any information under section 94 or 95 in relation to the return; or

(ii) gave notice of an intention to enter land or premises under section 100(3); or

(iii) executed a warrant under section 101; or

(b) the EPA is satisfied that the person formed a view as to the information on which the return was based or as to whether a return was required, that, while incorrect, was reasonable, having regard to the information available to that person at the time the emissions return was required.

Section 135: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 135(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 135(1A): inserted, on 1 January 2013, by section 52(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 135(2): amended, on 1 January 2013, by section 52(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 135(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 135(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 135(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 136 Additional penalty for knowing failure to comply

(1) This section applies to a person who—

(a) is or was liable following—

(i) a new determination under section 78 or a variation or revocation of a decision under section 86C to repay units allocated and transferred to the person; or

(ii) an amendment under section 120 or an assessment under section 121 to surrender units (or additional units) or to repay units, in respect of any period covered by, or that should have been covered by, an emissions return; and

(b) is convicted of an offence under section 132(1)(c) to (f) or 133 that relates to—

(i) the units allocated and transferred to the person (including, but not limited to, the provision of information); or

(ii) an emissions return that was—

(A) amended under section 120; or

(B) assessed under section 121.

(2) If this section applies, the person is liable, in addition to any penalty imposed in respect of the offence, to—

(a) as the case may require,—

(i) transfer to the Crown holding account designated by the Minister or EPA in the notice referred to in section 79(3) or 86C(4) a number of units equivalent to the number of units specified as being repayable in that notice under section 79(3)(a) or 86C(4), or in any review or appeal proceedings relating to that determination or decision; or

(ii) surrender a number of units equivalent to the number of units determined by the EPA in the amendment under section 120 or the assessment under section 121, or in any review or appeal proceedings relating to that determination; and

(b) pay an excess emissions penalty of $30 for each unit the person is liable to transfer or surrender under paragraph (a).

(3) If this section applies, the EPA must give a notice to the person that—

(a) sets out the—

(i) number of additional units that the person is required to transfer to a Crown holding account or surrender under subsection (2); and

(ii) amount of the excess emissions penalty to which the person is liable under subsection (2); and

(b) requires the person to transfer to the designated Crown holding account or surrender the additional units, and pay the penalty within 60 working days of the date of the notice; and

(c) advises that, unless both the units are transferred to the designated Crown holding account or surrendered (as the case may require) and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137.

(4) To avoid doubt, any liability to transfer units to a Crown holding account or surrender units and pay a penalty under subsection (2) is additional to, and does not affect, the liability of a person to surrender or repay units under any other section of this Act or to pay a penalty under a penalty notice given by the EPA under section 134 or 134A.

(5) The amount of the excess emissions penalty, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

Section 136: substituted, on 8 December 2009, by section 45 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 136(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 136(2)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 136(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 136(3)(b): amended, on 1 January 2013, by section 53(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 136(4): amended, on 1 January 2013, by section 53(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 136(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 136(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 137 Interest for late payment

(1) This section applies if—

(a) a person—

(i) has failed to surrender or repay units when required to do so and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(i) or (iii) or 134A(2)(b); or

(ii) is required to surrender or repay units under section 123 and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(ii) or 134A(2)(b); or

(iii) is required to transfer units to a Crown holding account or surrender units and pay an excess emissions penalty under section 136; and

(b) the person does not comply, or comply in full, with the requirement to surrender or repay units and to pay the penalty by the relevant date.

(2) If this section applies, the person is liable to pay interest on the full amount of the excess emissions penalty—

(a) at the rate prescribed by the Governor-General by Order in Council; and

(b) for the period from the date by which the penalty was due to be paid until the associated liability to surrender or repay units or to transfer units to a Crown holding account under section 136 (or to pay any associated debt under section 159) has been met, and until the penalty and any interest due have been paid in full.

(3) To avoid doubt, interest accrues under subsection (2) even if the amount of the excess emissions penalty in a penalty notice has been paid in full if the associated requirement to surrender or repay units or to transfer units to a Crown holding account under section 136 (or to pay any associated debt under section 159) has not been met in full.

(4) Despite anything in this section, the EPA may remit any amount of interest that has accrued under this section, if the EPA is satisfied that—

(a) the failure of the person to comply with the requirement to surrender or repay units or to transfer units to a Crown holding account under section 136 and pay the penalty in full arises as a result of an event or a circumstance beyond the control of that person; and

(b) as a consequence of that event or circumstance, the person has a reasonable justification or excuse for the non-compliance; and

(c) the person corrected the failure to comply as soon as practicable.

(5) Without limiting the EPA's discretion under subsection (4), an event or circumstance may include—

(a) an accident or a disaster; or

(b) illness or emotional or mental distress.

(6) Despite anything in this section, the EPA may remit part of an amount of interest that has accrued under this section if the EPA is satisfied that it would be manifestly unfair or unjust to impose the full amount.

(7) For the purposes of this section, an **event or circumstance** does not include—

(a) an act or omission of an agent of a person, unless the EPA is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—

(i) that could not have been anticipated; and

(ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

(b) a person's financial position.

Section 137: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 137(1): substituted, on 8 December 2009, by section 46(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 137(1)(a)(i): amended, on 1 January 2013, by section 54(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 137(1)(a)(ii): amended, on 1 January 2013, by section 54(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 137(2)(b): substituted, on 8 December 2009, by section 46(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 137(3): substituted, on 8 December 2009, by section 46(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 137(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 137(4)(a): substituted, on 8 December 2009, by section 46(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 137(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 137(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 137(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 138 Obligation to pay penalty not suspended by appeal

(1) The obligation to pay and the right to receive and recover any excess emissions penalty or interest imposed under section 134, 134A, 136, or 137, and the obligation to transfer to a Crown holding account or surrender any additional units under section 136, are not suspended by any review or appeal.

(2) If the applicant or appellant is successful in the review or appeal, the amount of any excess emissions penalty or interest paid by the applicant must be refunded to the applicant or appellant by the EPA, and any units not required to be transferred to a Crown holding account or surrendered must be reimbursed in accordance with the procedure specified in section 124.

(3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed under section 146.

(4) The EPA must pay interest on any refunded excess emissions penalty and interest calculated in accordance with the following formula:

$$((X \times Y) \div 365) \times Z$$

where—

X is the number of days in the period that—

- (a) commences on the day on which the relevant penalty is lodged to the credit of the EPA; and
- (b) ends on the day on which the relevant penalty is refunded by the EPA; and

Y is the amount of penalty and interest that, having been paid, is caused to be refunded in accordance with the outcome of a successful appeal; and

Z is the rate of interest specified by the Governor-General by Order in Council made under section 137(2)(a).

Section 138: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 138(1): substituted, on 8 December 2009, by section 47(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 138(1): amended, on 1 January 2013, by section 55 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 138(2): substituted, on 8 December 2009, by section 47(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 138(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4) formula item X paragraph (a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4) formula item X paragraph (b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 138A Penalties to be paid into Crown account

The EPA must pay the amount of all excess emissions penalties and interest on the penalties received from a person in accordance with section 134, 134A, 136, or 137 into a Crown Bank Account.

Section 138A: inserted, on 5 December 2011, by section 17 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138A: amended, on 1 January 2013, by section 56 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 139 Liability of body corporate

If, in the course of proceedings against a body corporate for an offence under this Part, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of the person's actual or apparent authority, had that state of mind.

Section 139: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 140 Liability of directors and managers of companies

If a body corporate is convicted of an offence under this Part, every director and every person concerned in the management of the body corporate is also guilty of that offence if it is proved that—

(a) the act or omission that constituted the offence took place with the authority, permission, or consent of the director or person; or

(b) the director or person knew that the offence was to be, or was being, committed and failed to take all reasonable steps to prevent or stop it.

Section 140: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 141 Liability of companies and persons for actions of director, agent, or employee

(1) Any act or omission on behalf of a body corporate or other person (the **principal**) by a director, agent, or employee of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

(2) Despite subsection (1), if a principal is charged under this Part in relation to the act or omission of an agent for an offence against any of sections 132(1)(c) to (f) or 133, it is a defence to the charge if the principal proves that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind.

Section 141: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 142 Limitation period for commencement of proceedings

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against—

(a) section 131 or 132(1)(a), (b), (g), (h), or (i) ends on the date that is 2 years from the date on which the offence was committed:

(b) section 129, 130, or 132(1)(c) to (f) ends on the date that is 7 years from the date on which the offence was committed.

(2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

Section 142: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 143 Evidence in proceedings

(1) In any proceedings for an offence against this Part or Part 5, a certificate or document (including an electronic copy) of any of the following kinds is admissible in evidence and, in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or the document, as the case may require:

(a) a certificate purporting to be signed by a delegate of the EPA, to the effect that, at any specified date or period,—

(i) a named person is or was, or is not or was not, an enforcement officer or a person or organisation recognised under section 92; or

(ii) a person was, or was not, registered as a participant in relation to an activity listed in Schedule 4:

(b) a certificate purporting to be signed by any person authorised to delegate to any person, or to persons of any kind or description, the exercise of any power or the performance of any function under this Part or Part 5, stating that the person has delegated—

(i) the exercise of the power or the performance of the function specified in the certificate to the person specified in the certificate; or

(ii) the exercise of the power or the performance of the function specified in the certificate to persons of a kind or description specified in the certificate, and that a named person specified in the certificate is a person of that kind or description.

(2) The production of a certificate or document purporting to be a certificate to which subsection (1) applies is prima facie evidence that it is such a certificate or document, without proof of—

(a) the signature of the person purporting to have signed the document; or

(b) the document's nature.

Section 143: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 143(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## Subpart 5—Review and appeal provisions

Subpart 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 144 Request for review of decisions

(1) A person affected by a decision of the EPA under a provision in this Part or Part 5 who is dissatisfied with the decision may, by notice to the EPA within 20 working days of receiving notice of the decision, or within any further period that the EPA allows, request the EPA to review the decision.

(2) The request must set out the grounds on which it is believed that the original decision should be reviewed.

(3) For the purposes of a review, the EPA may require the person making the request for review to supply information additional to that contained in the request.

(4) Following a review, the EPA may confirm, revoke, or vary the decision in the manner that the EPA thinks fit.

(5) The decision requested to be reviewed remains valid unless and until altered by the EPA.

(6) The EPA must, as soon as practicable, give notice to the person who requested the review of the decision on the review, and of the reasons for it.

(7) A decision by the EPA under this section is final, unless determined otherwise by a court under an appeal under section 145 or 146.

(8) This section does not apply to any decision that the EPA makes under section 90 or of the EPA in relation to emissions rulings (including a decision to decline making a ruling) under sections 107 to 117.

Section 144: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 144(1): amended, on 1 January 2013, by section 58 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 144(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(8): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 145 Right of appeal to District Court

(1) A person has a right of appeal to the District Court if affected by a decision of the EPA under section 144.

(2) The court may confirm, reverse, or modify the decision appealed against.

(3) Every decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

Section 145: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 145(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 145(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 146 Appeals to High Court on questions of law only

If a party to any proceedings before the District Court under section 145 is dissatisfied with any determination of the court as being erroneous in point of law, the party may appeal to the High Court by way of case stated for the opinion of the court on a question of law only.

Section 146: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 6—Miscellaneous provisions

Subpart 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 147 Giving of notices by EPA

(1) This section applies if this Act requires the EPA to give a notice to a person.

(2) If this section applies, the EPA—

(a) must give the notice in writing to—

(i) the person; or

(ii) a representative authorised to act on behalf of the person; and

(b) may give notice by—

(i) personal delivery to a person that is not a body corporate:

(ii) personal delivery to a person that is a body corporate, if the personal delivery is made to the person's office during working hours:

(iii) an electronic means of communication to the person, if the EPA complies with Part 4 of the Contract and Commercial Law Act 2017:

(iv) post to—

(A) the street address of the person's usual or last known place of residence; or

(B) the street address of any of the person's usual or last known places of business; or

(C) any other address, if the person has notified the EPA that the person accepts notices at the address.

(3) A notice given by post under subsection (2)(b)(iv) is to be treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

Section 147: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 147 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2)(b)(iii): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 147(2)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2)(b)(iv)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 148 Giving of notices to EPA

(1) This section applies if this Act requires a person to give a notice to the EPA.

(2) If this section applies, the person must—

(a) give the notice in writing; and

(b) may—

(i) give the notice to the EPA at the office of the EPA:

(ii) give the notice by—

(A) personal delivery, if the personal delivery is made during working hours:

(B) an electronic means of communication, if the person complies with Part 4 of the Contract and Commercial Law Act 2017:

(C) post to the post office box number for the office.

(3) A notice given by post under subsection (2)(b)(ii)(C) is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

Section 148: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 148 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 148(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 148(2)(b)(i): substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 148(2)(b)(ii)(B): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

### 149 Sharing information

(1) The purpose of this section is to facilitate the exchange of information between any person with functions or powers under this Act, the Registrar, and the inventory agency.

(2) A person referred to in subsection (1) (**person A**) must provide information to another person referred to in that subsection (**person B**) if the information—

(a) is requested by person B; and

(b) is required by person B to assist person B to carry out his or her functions under this Act.

Section 149: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 150 Formation of consolidated group

(1) Any 2 or more participants who are members of a group may, in respect of any activity or activities listed in Schedule 3 or 4, elect to form and be treated as a consolidated group for the purposes of this Part and Part 5.

(2) A consolidated group may, in addition to participants who are members of the group, include a member of the group that is not a participant, if that entity is to act as the nominated entity.

(3) An election under subsection (1) must be made by giving notice to the EPA in the prescribed form.

(4) A notice given under subsection (3) must—

(a) include—

(i) the names of each of the entities that are to be members of the consolidated group (and contact details of any member that is not registered as a participant); and

(ii) the activities in respect of which the members elect to be treated as a consolidated group; and

(b) nominate one of the entities listed in the notice (the **nominated entity**) as the agent of the consolidated group in respect of the activities specified in the notice and this Part and Part 5; and

(c) contain an agreement by each entity listed in the notice as a member of the consolidated group—

(i) to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the activities specified in the notice; and

(ii) to the transfer to the consolidated group's holding account on behalf of the group of any units to which any member of the consolidated group may become entitled in respect of any removal activity listed in the notice.

(5) The EPA must acknowledge the formation of a consolidated group by notice to all members of the group given within 1 month after the EPA's receipt of a notice under subsection (3).

(6) If 2 or more participants have elected under subsection (1) to form a consolidated group, those participants must be treated for the purposes of this Part and Part 5 as being members of a consolidated group,—

(a) if notice of the formation of the consolidated group is received by the EPA by 30 September in any year, from the beginning of that year:

(b) if notice of the formation of the consolidated group is received by the EPA after 30 September in any year, from the beginning of the following year.

(6A) Despite subsection (1), 2 or more members of a group may, if they elect to form a consolidated group in respect of an activity, give notice to the EPA under subsection (3)—

(a) at the same time they all give notice to the EPA under section 56 in respect of that activity; or

(b) at the same time they all submit an application under section 57 in respect of that activity.

(6B) Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6A) is not required to have its own holding account under section 61 to comply with its obligations as a participant in respect of an activity specified in the notice given under subsection (3) and is not required to open a holding account when giving notice under section 56 or making an application under section 57 in respect of an activity, if—

(a) the notice given in accordance with subsection (6A) is received by the EPA by 30 September in the year in which that notice is given; and

(b) the nominated entity specified in the notice given in accordance with subsection (6A) has, or has applied for, a holding account in the name of the consolidated group.

(7) To avoid doubt, a participant may be a member of more than 1 consolidated group in relation to different activities.

Section 150: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 150(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6)(a): amended, on 8 December 2009, by section 48(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(a): amended, on 8 December 2009, by section 48(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6)(b): amended, on 8 December 2009, by section 48(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(b): amended, on 8 December 2009, by section 48(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6A): inserted, on 8 December 2009, by section 48(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6A)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6B): inserted, on 8 December 2009, by section 48(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6B): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6B)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 151 Changes to consolidated groups

(1) If at any time 2 or more participants who are members of a group have formed a consolidated group, and at least 1 participant remains a member of the consolidated group, any other participant (or, in the circumstances specified in section 150(2), any other entity that is a member of the group) may elect to join and be treated as a member of the consolidated group by giving notice to the EPA in a form that the EPA approves.

(2) A notice given under subsection (1) must—

(a) include—

(i) the name of the entity that elects to join the consolidated group (and the entity's contact details if it is not registered as a participant) and sufficient information for the EPA to identify the consolidated group that is to be joined; and

(ii) if the entity is a participant, the activity or activities in respect of which the entity elects to be treated as a member of that consolidated group; and

(b) contain the agreement of the entity—

(i) to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the activities of the members of the group; and

(ii) if the entity is a participant, to the transfer to the consolidated group's holding account on behalf of the group of any units to which the entity may become entitled in relation to any removal activities specified in the notice; and

(c) contain the agreement of every existing member of the consolidated group—

(i) to be jointly and severally liable with the other members of the group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the activities of the joining entity; and

(ii) to the transfer to the consolidated group's holding account, on behalf of the group, of any units to which the joining entity may become entitled in respect of the activity or activities of that entity specified in the notice.

(3) The EPA must acknowledge the joining of a member to a consolidated group by notice to all members of the group given within 1 month after the EPA's receipt of a notice under subsection (1).

(4) Subject to subsection (6), if a participant elects under subsection (1) to join a consolidated group, that participant must be treated for the purposes of this Part and Part 5 as being a member of that consolidated group on and after 1 January of the year in which the participant gives notice to the EPA under subsection (1).

(5) If an entity referred to in section 150(2) has elected by notice under subsection (1) to join a consolidated group, that entity must be treated for the purposes of this Part as being a member of that consolidated group from the date of receipt by the EPA of the notice, or from any later date that may be specified in the notice.

(6) An entity may, if the entity elects to be treated as a member of a consolidated group on and after the date the entity is registered as a participant in respect of an activity, give notice to the EPA under subsection (1)—

(a) at the same time as giving notice to the EPA under section 56 in respect of that activity; or

(b) when submitting an application under section 57 in respect of that activity.

(7) Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6) is not required to have its own holding account under section 61 to comply with its obligations as a participant in respect of an activity specified in the notice given under subsection (1) and is not required to apply for a holding account, when—

(a) giving notice to the EPA under section 56 in respect of that activity; or

(b) submitting an application under section 57 in respect of that activity.

Section 151: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 151(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(4): substituted, on 8 December 2009, by section 49(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(6): added, on 8 December 2009, by section 49(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(7): added, on 8 December 2009, by section 49(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 151A Addition of activities to consolidated groups

(1) A member of a consolidated group may elect to add to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.

(2) A notice given under subsection (1) must—

(a) include the name of the member and the activity or activities the member is electing to add to the activities in respect of which the member is treated as a member of the consolidated group; and

(b) contain the agreement of every existing member of the consolidated group—

(i) to be jointly and severally liable with the other members of the group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the member's activity or activities specified in the notice; and

(ii) to the transfer to the consolidated group's holding account, on behalf of the group, of any units to which the adding member may become entitled in respect of the activity or activities specified in the notice.

(3) The EPA must acknowledge that the member has added the activity or activities specified in the notice under subsection (1) to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA's receipt of the notice.

(4) If a member has elected under subsection (1) to add to the activities in respect of which the member is treated as a member of the consolidated group, the activity or activities specified in the notice are added,—

(a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year:

(b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.

Section 151A: inserted, on 8 December 2009, by section 50 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(4)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(4)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 152 Nominated entities

(1) The nominated entity for a consolidated group at any time is to be treated for the purposes of this Part and Part 5 as the agent at that time of the consolidated group, and of each entity that is at that time a member of the consolidated group, except where this Act otherwise expressly provides or the context otherwise requires.

(2) No entity is at any time a nominated entity for a consolidated group unless, at the time, the entity is a member of the consolidated group.

(3) An entity that is a nominated entity for a consolidated group may give notice to the EPA, in a form that the EPA approves, that—

(a) the entity is to cease to be the agent for the consolidated group; and

(b) another member entity is to become the agent for the consolidated group.

(4) If an entity gives notice under subsection (3), then, from the date of receipt by the EPA of the notice, or from a later date that may be specified in the notice,—

(a) the notifying entity ceases to be the agent for the consolidated group; and

(b) the other entity becomes the agent (nominated entity) for the consolidated group.

Section 152: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 152(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 152(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 153 Effect of being member of consolidated group

(1) The nominated entity of a consolidated group must—

(a) have a holding account in the name of the consolidated group for the purposes of meeting the members' obligations under this Part and Part 5; and

(b) record in that holding account the names of all the members of the consolidated group; and

(c) submit a single annual emissions return for the consolidated group in respect of a year, which must—

(i) meet the requirements of section 65(2) in respect of the activities listed in the notice under section 150(4)(a)(ii) or 151(2)(a)(ii) carried out by each member of the consolidated group:

(ii) be signed by the nominated entity in accordance with section 65(2)(f) on behalf of the consolidated group.

(2) Each member of a consolidated group is jointly and severally liable to surrender the amount of units assessed in relation to the consolidated group in any year, and that joint and several liability is in substitution for any liability of those members under this Part or Part 5 individually in respect of units to be surrendered for that year (to the extent that the surrender obligation relates to a period when the entity is a member of the consolidated group).

(3) The liability of every member of the consolidated group to surrender units in respect of any year is met by the transfer of the units assessed in relation to the consolidated group from the consolidated group's holding account to a surrender account designated by the EPA.

(4) Each member of a consolidated group is jointly entitled to any New Zealand units assessed in relation to the removal activities of the consolidated group in any year, and that joint entitlement is in substitution for any entitlement of those members under this Part or Part 5 individually in respect of units to be transferred for that year (to the extent that the entitlement relates to a period when the entity is a member of the consolidated group).

(5) The entitlement of every member of the consolidated group to be transferred units for removal activities in respect of any year must be met by the transfer of the number of units assessed in relation to the consolidated group to the consolidated group's holding account.

(6) This section—

(a) does not prevent the nominated entity submitting—

(i) a quarterly emissions return under section 66 for other removal activities of the consolidated group; or

(ii) submitting an emissions return under section 187 in respect of an entity who is a member of the consolidated group; and

(b) applies with any necessary modifications to the period of an emissions return in either of those circumstances.

(7) To avoid doubt, an emissions return for a consolidated group or any member of a consolidated group may be submitted only by the nominated entity of the consolidated group.

Section 153: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 153(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 153(6)(a)(ii): amended, on 8 December 2009, by section 51(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 153(7): added, on 8 December 2009, by section 51(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 154 Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4

(1) The nominated entity of a consolidated group that has been formed in respect of an activity listed in Part 1 of Schedule 4—

(a) may submit a single emissions return under section 189(3) in respect of 1 or more of the activities listed in Part 1 of Schedule 4 carried out by a member in a year; and

(ab) may, if section 189(2)(d) applies to a member, submit an emissions return in accordance with section 189(4A) on behalf of the member; and

(b) must submit a single emissions return in respect of any activity listed in Part 1 of Schedule 4 carried out by any members when required to do so by section 189(4); and

(c) must submit any emissions return required by section 191 or 193 on behalf of any member when a member is required to do so; and

(d) must sign any emissions return referred to above in accordance with section 65(2)(f) on behalf of the consolidated group.

(2) Section 153(2) to (5) apply to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in this section as if the references to a year were a reference to the period covered by the emissions return or, if the return does not relate to a period covered by the emissions return, as if section 153(2) to (5) referred to the liability to surrender units or entitlement to be transferred units in relation to the emissions return.

(3) To avoid doubt, only the nominated entity may submit an emissions return for a consolidated group that has been formed in respect of 1 or more of the activities listed in Part 1 of Schedule 4.

Section 154: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 154(1)(a): amended, on 8 December 2009, pursuant to section 52(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 154(1)(ab): inserted, on 8 December 2009, by section 52(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 154(2): amended, on 8 December 2009, by section 52(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 154(3): added, on 8 December 2009, by section 52(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 155 Ceasing to be member of consolidated group

(1) An entity that is a member of a consolidated group ceases to be a member of the consolidated group if—

(a) the entity so elects, by notice to the EPA in a form that the EPA approves; or

(b) the entity ceases to be a member of the group in respect of which it is eligible to be a member of the consolidated group; or

(c) the entity ceases to be a participant, unless the entity is the nominated entity; or

(d) the entity ceases to be the nominated entity and is not a participant; or

(e) the entity is a member of a consolidated group that has ceased to have a nominated entity.

(2) An entity is treated as having ceased to be a member of a consolidated group,—

(a) if subsection (1)(a) applies and the notice of election to cease to be a member of the consolidated group is received by the EPA—

(i) by 30 September in any year, on and after 1 January of that year; or

(ii) after 30 September in any year, on and after 1 January of the following year; and

(b) if subsection (1)(b) applies, with effect from the date on which the entity ceased to be a member of the group in respect of which it is eligible to be a member of the consolidated group; and

(c) if subsection (1)(c) applies, with effect from the date the participant's name is removed from the register of participants under section 58 or 59; and

(d) if subsection (1)(d) applies, with effect from the date of receipt by the EPA of the notice under section 152(3) notifying that the entity has ceased to be the nominated entity for the consolidated group; and

(e) if subsection (1)(e) applies, with effect from the date on which the consolidated group ceased to have a nominated entity.

(3) Subsection (1)(e) does not apply if—

(a) the nominated entity ceases to be the nominated entity by reason of being liquidated; and

(b) within 20 working days of that liquidation, or within such further period as the EPA may allow, the other entities in the consolidated group have selected another nominated entity and notified the EPA accordingly (in which case the selected entity is treated as the nominated entity with effect from the time of the liquidation).

(4) An entity that ceases to be a member of a group in respect of which it is eligible to be a member of the consolidated group, or is a member of a consolidated group that ceases to have a nominated entity, must as soon as practicable give notice to the EPA of this change of circumstances.

(5) The EPA must acknowledge the cessation of membership of a member of a consolidated group by notice to that member and the other members of the consolidated group given within 1 month of—

(a) the EPA receiving a notice under—

(i) subsection (1)(a); or

(ii) section 152(3); or

(b) the EPA becoming aware that subsection (1)(b) or (e) applies; or

(c) the member being removed from the register of participants under section 58 or 59.

(6) Subsection (7) applies to an entity that—

(a) ceases to be a member of a consolidated group but remains a participant; and

(b) does not have its own holding account.

(7) An entity to which this subsection applies must,—

(a) immediately upon ceasing to be a member of the consolidated group, apply to open a holding account under section 18A; and

(b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

Section 155: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 155(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(2)(a): substituted, on 8 December 2009, by section 53(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(2)(d): amended, on 8 December 2009, by section 53(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(3)(b): amended, on 1 January 2013, by section 59 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 155(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(6): added, on 8 December 2009, by section 53(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(7): added, on 8 December 2009, by section 53(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 156 Effect of ceasing to be member of consolidated group

If an entity ceases to be a member of a consolidated group, the entity—

(a) continues to be jointly and severally liable with other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals from the activities of the members of the consolidated group, and jointly entitled to any units transferred for the removal activities of the consolidated group, during the period in which the entity was a member of the consolidated group; but

(b) is not liable for any obligations under this Part or Part 5 in respect of emissions and removals from the activities of other members of the group, or entitled to the benefit of any units transferred for the removal activities of other members of the group, for any period during which the entity is not a member of the consolidated group.

Section 156: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 156A Removal of activities from consolidated groups

(1) A member of a consolidated group may elect to remove 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.

(2) The activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group,—

(a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year:

(b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.

(3) The EPA must acknowledge that the activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA's receipt of the notice.

(4) If a member has removed an activity from the activities in respect of which the member is treated as a member of a consolidated group, that member continues to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals related to the activity, and jointly entitled to any units transferred for the activity (if it is a removal activity), in respect of the period in which the activity was an activity in respect of which the member was treated as a member of the consolidated group.

(5) Subsection (6) applies to a member of a consolidated group that—

(a) removes 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group; and

(b) remains a participant in respect of 1 or more of those activities; but

(c) does not have its own holding account.

(6) A member of a consolidated group to which this subsection applies must—

(a) apply to open a holding account under section 18A immediately upon removal of the activity or activities from the activities in respect of which the member is treated as a member of the consolidated group; and

(b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

Section 156A: inserted, on 8 December 2009, by section 54 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 156A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 157 Unincorporated bodies

(1) This section applies if the members of an unincorporated body—

(a) jointly carry out an eligible activity; or

(b) are required under section 180, 204, or 213 to be treated as jointly carrying out an activity listed in Schedule 3; or

(c) if paragraph (b) does not apply, jointly carry out an activity listed in Schedule 3 or 4.

(2) If this section applies,—

(a) the members of the unincorporated body are not individually to be treated as persons carrying out the activity; and

(b) if the activity is an eligible activity,—

(i) the members of the unincorporated body may not apply individually for an allocation of New Zealand units for the eligible activity under section 86; but

(ii) the unincorporated body may, as the eligible person, make such an application under section 86; and

(c) if the activity is an activity listed in Schedule 3 or 4,—

(i) the members of the unincorporated body—

(A) are not liable to, and may not, be registered as a participant under section 56 in respect of the activity; and

(B) may not be registered as a participant under section 57 in respect of the activity; and

(ii) the unincorporated body—

(A) must notify the EPA that it is the participant under section 56 in respect of the activity (if the activity is an activity listed in Schedule 3):

(B) may apply to be registered as the participant under section 57 in respect of the activity (if the activity is an activity listed in Schedule 4):

(C) when notifying under section 56 or applying to be registered under section 57, as the case may be, advise the EPA of the name of the unincorporated body that should be entered on the register of participants kept for the purposes of section 56 or 57; and

(iii) the EPA must, for the purpose of section 56(3) or 57(5) (as applicable), enter the name of the unincorporated body on the register kept for the purposes of section 56 or 57; and

(d) the unincorporated body must, when applying for an allocation, or notifying the EPA under section 56, or applying to the EPA to be registered as a participant under section 57, as the case may be, provide the EPA with—

(i) the names and contact details of the members of the unincorporated body; and

(ii) the name and contact details of the person to whom notices are to be given under this Act on behalf of the unincorporated body; and

(e) subject to subsections (3) to (5), any change of members of the unincorporated body has no effect for the purposes of this Act.

(3) Each person who is or has ceased to be a member of an unincorporated body is, in respect of the period during which the person is or was a member of the unincorporated body,—

(a) jointly and severally liable for the obligations of the unincorporated body as an eligible person (or a person to whom units have been allocated) or as a participant in respect of the activity; and

(b) jointly entitled to the benefits of the unincorporated body as an eligible person or as a participant in respect of the activity.

(4) If this Act requires any thing to be done by or on behalf of an eligible person (or a person to whom units have been allocated) or a participant that is an unincorporated body,—

(a) it is the joint and several liability of all the members of the unincorporated body to do the thing; and

(b) any such thing done by 1 member of the unincorporated body is sufficient compliance with the requirement.

(5) A notice that is addressed to an unincorporated body and given in accordance with this Act to the person nominated by the unincorporated body under subsection (2)(d)(ii) or (if relevant) notified under section 157A(2)(a) is to be treated as notice given to the unincorporated body and all members of the unincorporated body.

(6) To avoid doubt, if this Act requires a landowner, registered leaseholder, holder of a registered forestry right, or party to a Crown conservation contract to be treated as the person carrying out an eligible activity or an activity listed in Schedule 3 or 4, and the land, registered lease, registered forestry right, or Crown conservation contract is owned, held, or has been entered into, as the case may be, jointly by 2 persons, those persons—

(a) must together be treated as the person carrying out the activity for the purposes of this Act; and

(b) are, as relevant, together the eligible person in respect of the eligible activity, or the participant in respect of any activity listed in Schedule 3, or may together be registered as the participant in respect of an activity listed in Schedule 4; and

(c) are jointly and severally liable for the obligations, or entitled to the benefits, of an eligible person (or a person to whom units have been allocated) or a participant in respect of the activity.

Section 157: substituted, on 8 December 2009, by section 55 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 157(2)(c)(ii)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(c)(ii)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(c)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 157A Changes to unincorporated bodies that are participants

(1) This section applies if—

(a) a member of an unincorporated body joins or leaves an unincorporated body that is registered as a participant; or

(b) the name or contact details of the person to whom notices are to be given changes; or

(c) an unincorporated body wishes to change the name under which the body is registered as a participant.

(2) If this section applies,—

(a) the unincorporated body must, as relevant,—

(i) within 20 working days of a person joining or leaving the unincorporated body, give the EPA notice of—

(A) the name and contact details of the person joining or leaving; and

(B) the date on which the person joined or left the unincorporated body; or

(ii) within 20 working days of a change in the name or contact details of the person to whom notices are to be given, give the EPA notice of that matter; or

(iii) give the EPA notice if the unincorporated body wishes to change the name under which the body is recorded as a participant on the register kept for the purposes of section 56 or 57; and

(b) the EPA must, as soon as practicable after receiving the notice,—

(i) amend—

(A) the EPA's records to reflect the change in membership of the unincorporated body or the change in the name or contact details of the person to whom notices are to be given; or

(B) the register kept under section 56 or 57, as the case may be, to record the change in the name of the unincorporated body; and

(ii) notify the Registrar of the change in membership of the unincorporated body, the change in the name or contact details of the person to whom notices are to be given, or the change in the unincorporated body's name; and

(iii) notify the unincorporated body of the amendment to the EPA's records or the participant register and the notification to the Registrar.

(3) A notice given under subsection (2) must—

(a) be in the prescribed form; and

(b) contain any other information the EPA may require; and

(c) be accompanied by the prescribed fee (if any).

(4) For the purposes of subsection (1), the following transfers must be treated as changes in the membership of an unincorporated body and not as the transfer of an interest for the purposes of section 192(1)(a):

(a) the transfer of land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer; and

(b) the transfer of a registered lease, registered forestry right, or Crown conservation contract relating to post-1989 forest land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer.

Section 157A: inserted, on 8 December 2009, by section 55 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 157A(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(a)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b)(i)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 158 Compensation for participants where public works result in liability to surrender units

(1) This section applies if a person becomes a participant in respect of an activity listed in Schedule 3 after being required to carry out the activity as a result of the exercise of a power that relates to a public work.

(2) If this section applies, the person who exercised the power must, to the extent that the participant is not compensated under any other Act, compensate the

participant for any liability to surrender units that the participant incurs as a result of the exercise of the power.

(3) All claims for compensation under subsection (2) must, unless settled by agreement, be determined in the manner provided by the Public Works Act 1981, and the provisions of that Act relating to compensation apply accordingly.

(4) For the purposes of this section, **public work** has the same meaning as in section 2 of the Public Works Act 1981.

Section 158: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 159 Recovery of costs

(1) This section applies if a person—

(a) is required to surrender or repay units and does not do so, or does not surrender or repay the total number of units required to be surrendered or repaid, within 1 year of the date of a penalty notice given under section 134 or 136 in relation to the units; or

(b) is a participant and enters into an insolvency process.

(2) If this section applies, the chief executive may seek to recover from the person, in a court of competent jurisdiction,—

(a) the cost of the units owed by the person as a debt; and

(b) the cost of the units that the insolvent participant would be required to surrender or repay under any other provision of this Act; and

(c) any costs associated with bringing and carrying out the action to recover the debt.

(3) For the purposes of subsection (2)(a), the following formula must be used to calculate the total cost of the units:

$$A = B \times C$$

where—

A is the total cost of the units

B is the number of units

C is the price of a New Zealand unit on the date that is 1 year after the date that the penalty notice is given under section 134 or 136 for the units.

(4) Any administrative costs incurred in the recovery of costs under subsection (2) and any penalties incurred under section 134, 134A, or 136 constitute a debt to the Crown and are recoverable by the chief executive in a court of competent jurisdiction.

(5) For the purposes of this section, **insolvency process** means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006.

Section 159: replaced, on 1 January 2013, by section 60 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 160 Review of operation of emissions trading scheme

(1) The Minister may, at any time, initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act.

(2) A review may be undertaken by any method the Minister considers appropriate.

(3) Without limiting the Minister's discretion under subsections (1) and (2), the Minister may appoint a review panel—

(a) to conduct a review under subsection (1); and

(b) to report in accordance with the terms of reference.

(4) If the Minister appoints a panel, the Minister must—

(a) specify the written terms of reference for the review; and

(b) publish the report of the panel; and

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

(5) If the Minister initiates a review but does not appoint a panel, the Minister must—

(a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and

(b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and

(c) specify the written terms of reference for the review; and

(d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.

Section 160: replaced, on 1 January 2013, by section 61 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161 Appointment and conduct of review panel

(1) If the Minister appoints a review panel under section 160, the Minister must—

(a) ensure that there are a minimum of 3 and a maximum of 7 members; and

(b) ensure that the majority of the members are not employees under the State Sector Act 1988; and

(c) consider whether the members have, in the Minister's opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—

(i) this Act; and

(ii) New Zealand's international obligations under the Protocol and the Convention and any other relevant international agreement; and

(iii) the operation of the emissions trading scheme established under this Act, including its environmental, social, and economic effects; and

(d) appoint 1 member as the chairperson of the panel.

(2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.

(3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.

(4) The review panel must—

(a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and

(b) after considering the Minister's response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.

(5) In conducting a review, the review panel—

(a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference for the review; and

(b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and

(c) may call for submissions.

Section 161: substituted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161(1): amended, on 1 January 2013, by section 62(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 161(3): replaced, on 1 January 2013, by section 62(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161(4)(b): amended, on 1 January 2013, by section 62(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161A Regulations in relation to eligible industrial activities

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing, for the purposes of subpart 2, the activities that are eligible industrial activities:

(b) prescribing in respect of each eligible industrial activity, as appropriate,—

(i) a description of the activity, including (but not limited to)—

(A) the input or inputs:

(B) the output or outputs:

(C) the physical, chemical, or biological transformation that takes place to transform the inputs into the outputs:

(ii) whether the activity is—

(A) highly emissions-intensive; or

(B) moderately emissions-intensive:

(iii) the products to be used as the basis for an allocation of New Zealand units in respect of the activity:

(iv) a methodology or methodologies for calculating the amount of each prescribed product for the purposes of sections 81 to 84:

(c) prescribing, for each prescribed product,—

(i) 1 or more allocative baselines; and

(ii) for the purpose of sections 81 to 84, which allocative baseline any person carrying out the activity must use when calculating an allocation entitlement under those sections (which may include an allocative baseline that a particular person must use):

(d) prescribing—

(i) an allocation factor or factors for—

(A) electricity:

(B) natural gas feedstock:

(ii) how each allocation factor must be used for the purpose of calculating allocative baselines in accordance with section 161B(3):

(e) prescribing information that must be kept for the purposes of section 86D.

(2) A regulation made under subsection (1) may permit persons to apply for and receive an allocation in respect of a period beginning on—

(a) 1 January of the year in which the regulation is made even if the regulation comes into force on a later date in that year:

(b) 1 January or 1 July in a year before the year in which the regulation is made provided the regulation comes into force on or before 31 December 2012.

(3) The Minister may recommend that regulations be made under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity—

(a) is—

(i) moderately emissions-intensive or highly emissions-intensive; and

(ii) trade-exposed; or

(b) is an Australian eligible industrial activity.

(4) Despite anything in this section or section 161B or 161C, a regulation may not be made under subsection (1) that prescribes electricity generation as an eligible industrial activity.

(5) The following regulations made under subsection (1) come into force on the day 5 years after the date of their notification in the *Gazette* or any later date that may be set by the regulations:

(a) a regulation that revokes a regulation prescribing an activity as an eligible industrial activity:

(b) a regulation that amends a regulation providing that an eligible industrial activity is highly emissions-intensive to provide that the eligible industrial activity is moderately emissions-intensive.

Section 161A: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161A(3): replaced, on 1 January 2013, by section 63 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161B Australian eligible industrial activities

(1) *[Repealed]*

(2) Any regulations that prescribe an activity as an eligible industrial activity under section 161A(3)(b) must prescribe—

(a) the same activity description for the activity, including (but not limited to) the matters listed in section 161A(1)(b)(i), as the activity description for the Australian eligible industrial activity; and

(b) the same products to be used as a basis for an allocation of New Zealand units in respect of the activity as the products that are, or are likely to be, used as a basis for the allocation of emissions units in respect of the Australian eligible industrial activity; and

(c) the same emissions-intensity level of the activity as the emissions-intensity level, or the likely emissions-intensity level, of the Australian eligible industrial activity; and

(d) for each prescribed product of the activity an allocative baseline or baselines that is or are the same as the allocative baseline or baselines that is or are, or is likely to be or are likely to be, specified as the allocative baseline or baselines of the equivalent product of the Australian eligible industrial activity.

(3) Despite subsection (2)(d), if an Australian electricity allocation factor or Australian natural gas feedstock allocation factor was used in the calculation of an allocative baseline (or likely allocative baseline) of a product of the Australian eligible industrial activity, then the allocative baseline or baselines prescribed under section 161A(1)(c) for the equivalent product must be the allocative baseline or baselines that is or are, or is likely or are likely, to be specified as the allocative baseline or baselines of the product of the Australian eligible

industrial activity adjusted by substituting an electricity allocation factor or natural gas feedstock allocation factor (as the case may be) prescribed under section 161A(1)(d).

Section 161B: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161B(1): repealed, on 1 January 2013, by section 64(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161B(2): amended, on 1 January 2013, by section 64(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161C Other eligible industrial activities

(1) For the purposes of section 161A(3)(a), an activity is—

(a) moderately emissions-intensive if the specified emissions from the activity are equal to or greater than 800 whole tonnes per $1 million of specified revenue from the activity, but less than 1 600 whole tonnes per $1 million of specified revenue from the activity:

(b) highly emissions-intensive if the specified emissions from the activity are equal to or greater than 1 600 whole tonnes per $1 million of specified revenue from the activity:

(c) trade-exposed unless, in the Minister's opinion,—

(i) there is no international trade of the output of the activity across oceans; or

(ii) it is not economically viable to import or export the output of the activity.

(2) If an activity meets the criteria in section 161A(3)(a) in accordance with subsection (1), any regulations that prescribe the activity as an eligible industrial activity and the products to be used as the basis for an allocation of New Zealand units in respect of the activity must prescribe the allocative baseline or baselines of each product, calculated in accordance with the following formula:

$$AB = SE/STA$$

where—

AB is the allocative baseline of the product

SE is the specified emissions from the activity

STA is the specified total amount of the product from the activity.

(3) For the purposes of this section,—

(a) the specified revenue from an activity is the amount of revenue obtained by adding together the revenue from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(A) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:

(b) the specified emissions, in respect of the emissions intensity of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(B) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:

(c) the specified emissions, in respect of the allocative baselines of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(C) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:

(d) the specified total amount of product from the activity is the amount of the product obtained by adding together the amount of the product produced by each person who provided the information referred to in section 161D(1)(e)(i)(D) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity.

(4) Despite subsection (3)(c), the Minister may adjust the number of whole tonnes of included emissions shown in the information referred to in section 161D(1)(e)(i)(C) provided by any persons carrying out an activity specified in a notice given under section 161D(1) after taking into account any electricity-related contract that was in force on the date of the notice that affects the electricity cost increase that any of the persons will face due to the obligation imposed by this Act on participants to surrender units, or any information relating to any such contracts.

(5) If the Minister has adjusted the tonnes of emissions of 1 or more persons under subsection (4), the Minister may use both the information as originally submitted and as adjusted to calculate different allocative baselines for the relevant product.

Section 161C: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 161D Power to require information for purposes of allocation to industry

(1) The Minister may, for any of the purposes in subsection (3), by notice in the *Gazette*—

(a) specify a description of an activity, including the matters listed in section 161A(1)(b)(i) in respect of the activity:

(b) specify in respect of the activity each product that may be used, if the activity is prescribed in regulations as an eligible industrial activity, as the basis for an allocation of New Zealand units in respect of the activity (a **specified product**):

(c) specify in respect of the activity—

(i) the emissions that must be included in any information provided under paragraph (e) (the **included emissions**); and

(ii) the emissions that may not be included in any information provided under paragraph (e) (the **excluded emissions**):

(d) specify the financial years for which information must be provided under paragraph (e):

(e) require any person carrying out the activity specified under paragraph (a) on the date of the notice to provide to the Minister—

(i) any or all of the following information for the financial years specified in the notice:

(A) financial statements that show the total revenue of the person from the activity in those years, calculated in accordance with any methodology specified under paragraph (g)(i):

(B) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(ii) (emissions-intensity):

(C) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(iii) (allocative baselines):

(D) information showing the amount of each specified product produced by the person in those years calculated in accordance with any methodology specified under paragraph (g)(iv):

(ii) copies of any electricity-related contracts in force on the date of the notice that affect the electricity cost increase that the persons carrying out the activity will face owing to the obligation imposed by this Act on participants to surrender units, or any information in relation to such contracts:

(iii) any other information that would, in the Minister's opinion, assist the Minister to determine any of the matters listed in subsection (3):

(f) specify the date by which the information required to be provided under paragraph (e) must be provided to the Minister, which date must be no earlier than 30 working days from the date of the notice:

(g) specify a methodology or methodologies for calculating—

(i) revenue from the activity for the purpose of paragraph (e)(i)(A):

(ii) emissions from the activity (emissions-intensity) for the purpose of paragraph (e)(i)(B):

(iii) emissions from the activity (allocative baselines) for the purpose of paragraph (e)(i)(C):

(iv) the amount of any specified product from the activity for the purpose of paragraph (e)(i)(D).

(2) A methodology specified in a notice in accordance with subsection (1)(g) may incorporate by reference any material referred to in section 169(1), and if material is incorporated by reference, sections 169(2) and (3), 170, and 177 apply with any necessary modifications.

(3) The purpose for which a notice may be issued under subsection (1) is to provide the Minister with the information necessary to determine any 1 or more of the following matters:

(a) whether an activity meets the criteria listed in section 161A(3)(a) and, if so, determine—

(i) whether the activity is highly emissions-intensive or moderately emissions-intensive; and

(ii) the appropriate allocative baseline or baselines for each product of the activity:

(b) whether it is necessary to adjust any person's number of whole tonnes of included emissions provided under subsection (1)(e)(i)(C) in accordance with section 161C(4):

(c) any other matter listed in section 161A(1) in respect of an activity:

(d) whether any matter should be considered by a review under section 160.

(4) A *Gazette* notice under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(5) Following the provision of information by any person in accordance with subsection (1)(e), the Minister may give notice to the person—

(a) requiring the person to provide any further information that the Minister considers is necessary to enable the verification of the accuracy of the information; and

(b) specifying the date by which the further information specified in the notice must be provided to the Minister.

(6) If a person who is required to comply with a notice under subsection (1) or (5) fails to provide the required information by the date specified in the notice, the Minister may give a notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible

for an allocation of New Zealand units in respect of the activity specified in the notice if it is prescribed as an eligible industrial activity.

(7) Despite anything in this Act, if an activity specified in a notice made under subsection (1)(a) is subsequently prescribed as an eligible industrial activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible industrial activity:

(a) any person who carried out the activity at the date of the notice and who without reasonable excuse failed to supply the data and information required by the date specified in a notice given under subsection (6); and

(b) any associated person of a person referred to in paragraph (a).

Section 161D: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161D(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 161E Requirements in respect of notice given under section 161D

(1) Before giving notice of an activity under section 161D(1), the Minister must have regard to the following matters:

(a) the requirement to define each activity by reference to a physical, chemical, or biological transformation of inputs into outputs; and

(b) the undesirability of activities being defined by reference to the technology employed, the fuel used, the age of the plant, or the quality of the types of feedstock used when the activity is carried out; and

(c) the desirability of defining activities—

(i) consistently and equitably across industries; and

(ii) in a way that takes into account the impact that definitions may have on business investment, geographical location, and the structure of activities; and

(iii) in a way that takes into account the potential for intermediate inputs produced when the activity is carried out to be substituted for bought-in inputs; and

(d) the desirability of there being no overlap between activity definitions; and

(e) the desirability of activity definitions reflecting activity definitions used in Australia; and

(f) any other matters the Minister considers relevant.

(2) For the purposes of section 161D(1)(c),—

(a) the emissions that must be included in any information provided under section 161D(1)(e)(i)(B) and (C) may only include—

(i) emissions of greenhouse gases resulting from—

(A) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil as part of the activity; and

(B) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil to generate steam that is used as part of the activity; and

(C) any of the activities listed in Part 4 of Schedule 3 carried out as part of the activity; and

(D) the direct use of any liquid fossil fuel in stationary equipment; and

(E) fugitive coal seam gas from coal that is used as part of, or to generate steam that is used as part of, the activity; and

(ii) a number of whole tonnes of emissions, which must be treated for the purpose of this section and sections 161C and 161D as emissions from the activity, calculated in accordance with the following formula:

$$E = MWh \times pEAF$$

where—

E is the number of whole tonnes of emissions from the activity that may be included in any information submitted under section 161D(1)(e)(ii) and (iii)

MWh is the number of megawatt hours of electricity used when the activity is carried out

pEAF is a prescribed electricity allocation factor; and

(b) the emissions that may not be included in any information provided under section 161D(1)(e)(ii) and (iii) must include (but are not limited to) emissions resulting from—

(i) the use of machinery and equipment, and other processes, that are not integral to, nor essential to, the physical, chemical, biological, or other transformation taking place when the activity is carried out; and

(ii) any extraction or production of raw materials that are subsequently used when the activity is carried out; and

(iii) the transportation of inputs used in the activity to storage at the location where the activity is carried out; and

(iv) the transportation of outputs of the activity from storage at the location where the activity is carried out to another location; and

(v) the transportation of intermediate products between different locations where the activity is carried out; and

(vi) operations that are complementary to the activity, including (but not limited to) packaging, head office operations, and administra-

tion and marketing (whether carried out at the same location where the activity is carried out or at another location); and

(vii) the generation of electricity at the location where the activity is carried out; and

(c) before giving notice of the emissions that must be included in, or excluded from, any information provided in accordance with a notice issued under section 161D, the Minister must have regard to the following matters:

(i) the matters listed in subsection (1); and

(ii) the desirability of all notices given under section 161D being consistent with respect to the classes of included and excluded emissions that are specified in the notices.

(3) If an activity specified in a notice under section 161D was carried out by any person in each of the financial years 2006/07, 2007/08, and 2008/09, then the notice must specify those financial years as the financial years for which information must be provided in accordance with the notice.

Section 161E: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161E(2)(a): amended, on 1 January 2013, by section 65(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161E(2)(a)(i)(D): inserted, on 1 January 2013, by section 65(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161E(2)(a)(i)(E): inserted, on 1 January 2013, by section 65(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161F Consultation on activities that may be prescribed as eligible industrial activities

(1) If an activity is treated as meeting the criteria specified in section 161A(3)(a) because it is an Australian eligible industrial activity, then before recommending the making of a regulation under section 161A prescribing the activity as an eligible industrial activity, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulation made in accordance with the recommendation.

(2) Before notifying an activity in the *Gazette* under section 161D, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or the representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by the description of the activity to be notified.

(3) The processes for consultation under subsections (1) and (2) must include—

(a) giving adequate and appropriate notice of the proposed terms and conditions of the recommendation or the notice and the reasons for them; and

(b) the provision of a reasonable opportunity for interested persons to consider the proposed terms and conditions of the recommendation or the notice and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) A failure to comply with this section does not affect the validity of—

(a) any regulations made under section 161A; or

(b) any *Gazette* notices issued under section 161D.

(5) The Minister is not required to consult under subsection (2) if the Minister issues a notice under section 161D for the sole purpose of requiring persons to provide electricity-related contracts or any information related to those contracts.

Section 161F: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 161G Regulations in relation to eligible agricultural activities

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing in respect of each eligible agricultural activity, as appropriate,—

(i) the product or products of the activity:

(ii) an allocative baseline for each product:

(b) prescribing, for the purpose of subsection (2),—

(i) a methodology or methodologies for calculating—

(A) the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the prescribed product or products in the prescribed years; and

(B) the total amount of each prescribed product produced from the eligible agricultural activity in the prescribed years; and

(ii) the year or years for the purposes of subparagraph (i):

(c) prescribing a methodology or methodologies for calculating the amount of any prescribed product of an eligible agricultural activity for the purposes of sections 85 and 161H:

(d) prescribing information that must be kept for the purposes of section 86D.

(2) For the purposes of subsection (1)(a)(ii), the allocative baseline for each prescribed product of an eligible agricultural activity must be calculated using the following formula:

$$AB = \sum(E) / \sum(PDCT)$$

where—

AB is the allocative baseline for the product

E is the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the product in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

PDCT is the total amount of the product produced from the eligible agricultural activity in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

$\sum$ is the symbol for the summation of E for the year or years for which E must be calculated (as prescribed by regulations made under this Act) and of PDCT for the year or years for which PDCT must be calculated (as prescribed in regulations made under this Act).

(3) Before recommending the making of a regulation under subsection (1) prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulation made in accordance with the recommendation.

(4) The process for consultation under subsection (3) must include—

(a) giving adequate and appropriate notice of the proposed allocative baseline or baselines and the reasons for them; and

(b) the provision of a reasonable opportunity for interested persons to consider the proposed allocative baseline or baselines and make submissions; and

(c) adequate and appropriate consideration of submissions.

(5) A failure to comply with subsections (3) and (4) does not affect the validity of any regulations made under subsection (1).

(6) Despite section 4, in this section and section 161H, **eligible agricultural activity**—

(a) means any activity or subclass of any activity listed in Part 5 of Schedule 3; but

(b) excludes any activity or subclass of any activity listed in subpart 2 or 4 of Part 5 of Schedule 3, unless an Order in Council has been made under section 2A(8) or (9) in respect of any such activity or subclass of activity.

Section 161G: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 161H Power to request information showing output from eligible agricultural activities

(1) The Minister may, after 1 January 2011, by notice in the *Gazette*,—

(a) specify an eligible agricultural activity in respect of which information must be provided under paragraph (d):

(b) specify, in respect of the eligible agricultural activity specified under paragraph (a), the product or products of the eligible agricultural activity in respect of which the information must be provided under paragraph (d):

(c) specify the year or years for which information must be provided under paragraph (d):

(d) require any person carrying out the eligible agricultural activity on the date of the notice to provide to the Minister information that shows the amount of each specified product from the activity specified by the person in the year or years specified in the notice, determined (if relevant) in accordance with any prescribed methodologies:

(e) specify the date by which the information specified in the notice must be provided to the Minister, which must be no earlier than 30 working days from the date of the notice.

(2) If a person who is required to comply with a notice given under subsection (1) fails to provide the required information by the date specified in the notice, the Minister may give written notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity.

(3) Despite anything in this Act, if notice is given under subsection (1) requiring a person to provide information with respect to an eligible agricultural activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible agricultural activity:

(a) any person who—

(i) carried out the activity at the date of the notice given under subsection (1); and

(ii) failed, without reasonable excuse, to supply the data and information required by the date specified in the notice given under subsection (2); and

(b) any associated person of a person referred to in paragraph (a).

(4) A *Gazette* notice under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 161H: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161H(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 162 Regulations adding further activity to Part 2 of Schedule 4

(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend Part 2 of Schedule 4 by adding a further activity to that Part.

(2) Before making a recommendation under subsection (1), the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any Order in Council made in accordance with the recommendation.

(3) The process for consultation should, to the extent practicable in the circumstances, include—

(a) giving adequate and appropriate notice of—

(i) the proposed terms of the recommendation; and

(ii) the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—

(a) 1 January of the next year, if made on or before 30 June in any year; or

(b) 1 July of the next year, if made on or after 1 July in any year.

Section 162: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 162(4): replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### 162A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 162(1) must indicate that—

(a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and

(b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and

(c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 162A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### 163 Regulations relating to methodologies and verifiers

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing the data or other information that must be collected under section 62(a) in respect of an activity, and, if relevant, the mechanism or method by which the data or information must be collected; and

(ab) authorising, in respect of an activity listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4, the EPA to specify the location where, and the device by which, the data or other information prescribed in accordance with paragraph (a) must be collected; and

(b) prescribing a methodology or methodologies for calculating emissions or removals from an activity for the purposes of section 62(b); and

(c) prescribing the data or other information, or the calculations of emissions or removals, that must be verified by a person or organisation recognised by the EPA under section 92; and

(d) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to—

(i) the matters prescribed under paragraph (a); and

(ii) the method and format for determining the spatial extent of an area of forest land; and

(e) prescribing, for the purposes of section 92,—

(i) the process by which a person or organisation may be recognised as being able to verify information or calculations for the purposes of section 62(a) or (c) or unique emissions factors for the purposes of regulations made under section 164; and

(ii) the expertise, technical competence, or qualifications required for recognition as a person or organisation able to verify unique emissions factors or information relating to 1 or more types of data or information, the calculations of certain types of emissions or removals, or 1 or more activities; and

(iii) any additional—

(A) requirements for recognition of an organisation; and

(B) restrictions on the employees of the organisation who may carry out the duties of the organisation in respect of the recognition; and

(iv) the period for which a person or organisation may be recognised, and the process for the renewal of recognition; and

(v) conditions of recognition, which may include (but are not limited to) ongoing competency and professional standard requirements,

membership of a professional body, and the provision of reports to the EPA; and

(vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and

(vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising a person or organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought.

(2) A regulation made under subsection (1) may apply—

(a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other things; or

(b) in respect of the same classes of activity, persons, parts of New Zealand, or other things, in different circumstances; or

(c) generally or at any specified time of each year.

(3) A regulation made under subsection (1)(a) to (d) may have retrospective effect if the regulation is expressed to apply from the commencement of the year in which it is made, or in respect of a period after any particular date within the year in which it is made.

(4) A regulation made under subsection (1)(b), and any associated regulations made under other paragraphs of subsection (1),—

(a) may, without limiting subsection (1), relate to emissions or removals that—

(i) stem directly from an activity; or

(ii) are associated with a product or other thing that is the subject of the activity; and

(b) may require the use of a computer programme available via the Internet site of the EPA; and

(c) must not cover any emissions in respect of which another person is required to surrender units or any removals of greenhouse gases in respect of which another person is entitled to a transfer of New Zealand units under this Act.

(5) In making a recommendation in relation to a regulation under subsection (1)(a) or (b), the Minister must have regard to New Zealand's international obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals from the activity.

(6) Any guidelines or standards issued by the chief executive under regulations made under subsection (1)(d) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(7) A person who has complied with guidelines or standards issued by the EPA in regulations made under subsection (1)(d) is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

Section 163: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 163(1)(ab): inserted, on 8 December 2009, by section 57 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 163(1)(ab): amended, on 1 January 2013, by section 66(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 163(1)(ab): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(c): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(d): replaced, on 1 January 2013, by section 66(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 163(1)(e)(v): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(e)(vii): amended, on 5 December 2011, by section 18(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(4)(b): amended, on 5 December 2011, by section 18(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(6): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 163(7): inserted, on 1 January 2013, by section 66(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 164 Regulations relating to unique emissions factors

If regulations made under section 163(1)(b) require emissions or removals to be calculated by reference to a default emissions factor, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

(a) providing for a process by which a participant may apply to the EPA for approval to use a unique emissions factor:

(b) prescribing the information that must be collected to support an application for use of a unique emissions factor:

(c) prescribing the criteria for a unique emissions factor, which may include (but are not limited to)—

(i) the percentage by which a unique emissions factor must vary from the default emissions factor, before an application for a unique emissions factor may be made:

(ii) the types of greenhouse gases to be reflected in the unique emissions factor:

(iii) how the unique emissions factor is to be calculated:

(iv) any criteria by which the default emissions factor has been set, that reflect the matters in section 163(4):

(v) a requirement that the unique emissions factor be verified by a recognised verifier.

Section 164: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 164(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 165 Regulations relating to offsetting of pre-1990 forest land

*[Repealed]*

Section 165: repealed (without coming into force), on 1 January 2013, by section 67 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 166 Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting

(1) Before making a recommendation for the making of regulations under section 163, 164, or 186F, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(3) Regulations referred to in this section come into force 3 months after the date of their notification in the *Gazette* or any later date that may be set out in the regulations.

(4) A failure to comply with this section does not affect the validity of regulations made under section 163, 164, or 186F.

(5) Subsection (3) does not apply to any regulations made under sections 163 (in relation to the forestry sector) and 186F on or before 1 January 2013.

Section 166: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 166(1): amended, on 1 January 2013, by section 68(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 166(4): amended, on 1 January 2013, by section 68(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 166(5): inserted, on 1 January 2013, by section 68(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 167 Regulations relating to fees and charges

(1) The Governor-General may, by Order in Council, make regulations prescribing the amount of any fees payable under this Part or Part 5 and the procedures for payment.

(2) The Governor-General may, by Order in Council, make regulations prescribing the fees or charges payable by a person—

(a) who has made an application for an emissions ruling under section 107, to enable the recovery of all or part of the direct and indirect costs of the EPA in—

(i) receiving and processing the application; and

(ii) considering whether to make the ruling, making the ruling, or declining to make the ruling; or

(b) who is a participant, or who has applied to be a participant, in respect of an activity listed in Part 1 or 2 of Schedule 4, to enable the recovery of all or part of the direct and indirect costs of the EPA in—

(i) publicising and informing people about the operation of this Part and Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(ii) administering the operation of this Part and Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(iii) enforcing and monitoring compliance with this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(iv) doing anything else authorised or required under this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4.

(3) Examples of the costs that may be recovered under subsection (2) include (but are not limited to)—

(a) the cost of processing applications and returns:

(b) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with—

(i) the making of emissions rulings; or

(ii) the administration of this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(c) the costs of services provided by third parties.

(4) Regulations made under subsection (2) may—

(a) specify the persons or classes of persons by whom any fees and charges prescribed or fixed are payable; and

(b) provide for partial cost recovery from one class of persons and full cost recovery from another (if this is desirable to further the purposes of this Act); and

(c) prescribe the matters for which direct and indirect costs may be recovered; and

(d) prescribe a scale of fees and charges, or a rate based on the time involved in carrying out the function or duty or in exercising the power; and

(e) prescribe a scale of fees and charges, or a fee or charge for a prescribed function, power, or duty; and

(f) prescribe a formula for fixing fees and charges; and

(g) prescribe an annual fee or charge, or classes of fees or charges, payable by participants or classes of participants; and

(h) prescribe the time of payment of fees and charges, the means of collection of fees and charges, and the person who is responsible for paying a fee or charge; and

(i) authorise the EPA to recover the full costs of services from third parties (other than services in respect of which a fee or charge is prescribed) in circumstances prescribed in the regulations; and

(j) authorise the EPA to grant, in whole or in part, an exemption, waiver, or refund in relation to any fee or charge.

(5) Subsection (2) is subject to sections 173(2) and 174(1) (which relate to material incorporated by reference).

Section 167: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 167(2): substituted, on 8 December 2009, by section 58(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 167(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 167(3)(b): substituted, on 8 December 2009, by section 58(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(h): amended, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(i): added, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 167(4)(j): added, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(j): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 168 Other regulations

(1) The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

(a) specifying the fuel that is obligation fuel and the jet fuel that is obligation jet fuel for the purposes of this Act; and

(b) prescribing matters in respect of which applications for emissions rulings may be made; and

(c) *[Repealed]*

(ca) prescribing a date by which an application to the EPA must be submitted under section 183; and

(d) prescribing forest species that are tree weeds; and

(e) prescribing criteria for carbon accounting areas; and

(f) requiring notification by the EPA of the status of forest land or any changes to the status of forest land under section 195; and

(g) providing for the circumstances in which a notice of the status of forest land must be cancelled by the Registrar-General of Land, a Registrar of the Maori Land Court, or the Registrar of Deeds; and

(h) *[Repealed]*

(i) *[Repealed]*

(j) prescribing a format or formats for the keeping of records under section 62(d); and

(k) prescribing the form and manner in which any application, return, information, or other document must be submitted or notified under this Part and Part 5, and the particulars to be provided in the application, return, or other document; and

(l) prescribing the information that must be provided in or with applications or other documents under this Part and Part 5; and

(m) prescribing a threshold for the purposes of any removal activity listed in Part 2 of Schedule 4; and

(n) prescribing criteria for registering as a participant in relation to an activity listed in—

(i) subpart 1 of Part 2 of Schedule 4; and

(ii) subpart 2 of Part 2 of Schedule 4, which may include criteria for the type of carbon dioxide capture and storage in respect of which a person may register as a participant; and

(iii) subpart 3 of Part 2 of Schedule 4; and

(o) providing for any other matters contemplated by this Part and Part 5 or Schedules 3 and 4, necessary for their administration, or necessary for giving them full effect.

(2) The power to prescribe the form of any application, return, information, or other document under subsection (1) includes the power to prescribe an elec-

tronic format to be used for the electronic transmission of data to or between computers.

Section 168: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 168(1)(c): repealed, on 8 December 2009, by section 59(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(ca): inserted, on 1 July 2009, by section 4 of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 168(1)(ca): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 168(1)(ca): amended, on 8 December 2009, by section 59(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(d): amended, on 1 January 2013, by section 69(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 168(1)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 168(1)(h): repealed, on 8 December 2009, by section 59(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(i): repealed, on 8 December 2009, by section 59(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(n): replaced, on 1 January 2013, by section 69(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 169 Incorporation by reference in regulations made under section 163, 164, 167, or 168

(1) The following written material may be incorporated by reference in regulations made under section 163, 164, 167, or 168:

(a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and

(b) any standards, requirements, or recommended practices of a government agency, standard-setting organisation, or professional body.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

Section 169: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 169 heading: amended, on 1 January 2013, by section 70(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 169 heading: amended, on 1 July 2009, by section 10 of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 169(1): amended, on 1 January 2013, by section 70(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 170 Effect of amendments to, or replacement of, material incorporated by reference in regulations

An amendment to, or replacement of, material incorporated by reference in regulations (**regulations A**) has legal effect as part of regulations A only if regulations made under section 163, 164, 165, 167, or 168, as may be applicable, after the making of regulations A, state that the particular amendment or replacement has that effect.

Section 170: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 171 Proof of material incorporated by reference

(1) A copy of any material incorporated by reference in regulations, including any amendment to, or replacement of, the material (**material**) must be—

(a) certified as a correct copy of the material by the chief executive; and

(b) retained by the chief executive.

(2) The production in proceedings of a certified copy of the material incorporated by reference is, in the absence of evidence to the contrary, sufficient evidence that the material produced is the material incorporated by reference in regulations.

Section 171: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 172 Effect of expiry of material incorporated by reference

Material incorporated by reference in regulations that expires, or that is revoked or that ceases to have effect, ceases to have legal effect as part of the regulations only if regulations made under section 163, 164, 165, 167, or 168 as may be applicable state that the material ceases to have legal effect.

Section 172: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 173 Requirement to consult

(1) This section applies to regulations made under section 163, 164, 165, 167, or 168 that—

(a) incorporate material by reference:

(b) state that an amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations.

(2) Before regulations to which this section applies are made, the chief executive must—

(a) make copies of the material proposed to be incorporated by reference, or the proposed amendment to or replacement of material incorporated by reference (**proposed material**), available for inspection during working hours for a reasonable period, free of charge, at the office of the chief executive; and

(b) make copies of the proposed material available for purchase at a reasonable price; and

(c) give notice in the *Gazette* stating—

(i) that the proposed material is available for inspection during working hours, free of charge; and

(ii) the place where the proposed material can be inspected, and the period during which it can be inspected; and

(iii) that copies of the proposed material can be purchased; and

(iv) the place where the proposed material can be purchased; and

(d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and

(e) consider any comments these persons make.

(3) The reference in subsection (2) to the **proposed material** includes, if the material is not in an official New Zealand language, an accurate translation of the material in an official New Zealand language.

(4) Before regulations to which this section applies are made, the chief executive—

(a) may make copies of the proposed material available in any other way that the chief executive considers appropriate in the circumstances (for example, via an Internet site); and

(b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the proposed material is available in other ways and details of where or how it can be accessed or obtained.

(5) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

Section 173: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 174 Public access to material incorporated by reference

(1) The chief executive—

(a) must make the material specified in subsection (2) (**material**) available for inspection during working hours, free of charge, at the office of the chief executive; and

(b) must make copies of the material available for purchase at a reasonable price at the office of the chief executive; and

(c) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, via an Internet site); and

(d) must give notice in the *Gazette* stating—

(i) that the material is incorporated in the regulations and the date on which the regulations were made; and

(ii) that the material is available for inspection during working hours, free of charge; and

(iii) the place where it can be inspected; and

(iv) that copies of the material can be purchased; and

(v) the place where the material can be purchased; and

(vi) that, if copies of the material are made available under paragraph (c), the material is available in other ways and the details of where or how the material can be accessed or obtained.

(2) The material is—

(a) material incorporated by reference in regulations made under section 163, 164, 165, 167, or 168:

(b) any amendment to, or replacement of, that material that is incorporated in the regulations or the material specified in paragraph (a) with the amendments or replacement material incorporated:

(c) if the material specified in paragraph (a) or (b) is not in an official New Zealand language, an accurate translation of the material in an official New Zealand language.

(3) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

Section 174: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 175 Application of Legislation Act 2012 to material incorporated by reference

(1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement of, that material.

(2) Material incorporated by reference in regulations does not have to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

Section 175: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 176 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

*[Repealed]*

Section 176: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 177 Application of Standards and Accreditation Act 2015 not affected

Sections 169 to 176 do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

Section 177: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 177 heading: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Section 177: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

### 178 Recovery of fees or charges

(1) A fee or charge that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fee or charge by the EPA in any court of competent jurisdiction.

(2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees or charges that are payable.

Section 178: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 178(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 178(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 178A Option to pay money instead of surrendering units to cover emissions

(1) This section applies if—

(a) a person is required to surrender or repay units—

(i) under section 65(4), 118(5), 189(8), or 193 for emissions from any activity; or

(ii) under section 183A(2)(b), 187, or 191; or

(b) the EPA is required under section 123(4), 186H, 187, 189(7)(d), or 191 to arrange for the reimbursement of units—

(i) for emissions from any activity; or

(ii) because approval is revoked or the offsetting forest land has not become pre-1990 offsetting forest land before deforestation of the relevant pre-1990 forest land.

(2) Despite anything in this Act, if this section applies, a person may satisfy the person's obligation to surrender, repay, or reimburse units,—

(a) in the case of a person other than the EPA, by—

(i) surrendering or repaying the units in accordance with section 65(4), 118(5), 183A(2)(b), 186H, 187, 189(8), 191, or 193, as applicable; or

(ii) paying a sum of $25 for each unit that the person is liable to surrender or repay, into a Crown Bank Account, by the date or within

the period by which the units are required to be surrendered or repaid; or

(iii) a combination of the actions provided for in subparagraphs (i) and (ii); or

(b) in the case of the EPA, by—

(i) reimbursing units to a person in accordance with the procedure specified in section 124; or

(ii) paying a sum of $25 for each unit into a bank account designated by the person; or

(iii) a combination of the actions provided for in subparagraphs (i) and (ii).

(3) For the purposes of subsection (2)(a)(ii) and (iii), a person's obligation to surrender units or repay units is only satisfied when the funds paid into a Crown Bank Account are cleared.

(4) For the purposes of subsection (3) and section 178B(1), funds paid into a Crown Bank Account are to be treated as cleared when it is no longer possible to reverse the payment and the funds are available for use by the Crown.

Section 178A: inserted, on 1 January 2013, by section 71 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 178B Issuing New Zealand units to meet surrender obligations

(1) If, in accordance with section 178A(2)(a)(ii) or (iii), a person pays a sum of $25 instead of surrendering a unit that the person is liable to surrender, the Registrar must, when the funds are cleared,—

(a) issue a number of New Zealand units into a Crown holding account equal to the number of units in respect of which the person has paid a sum of $25 for each unit; and

(b) transfer the New Zealand units into the person's holding account held for the purpose of section 61(1); and

(c) immediately following the transfer under paragraph (b), transfer the New Zealand units to a surrender account designated by the EPA.

(2) The Registrar may, for the purposes of subsection (1)(a), issue a number of New Zealand units equal to the number of units in respect of which 1 or more persons have paid a sum of $25 for each unit under section 178A(2)(a)(ii) or (iii).

(3) If the EPA is required to reimburse a person units under section 123(4), 186H, or 189(7)(d) and has satisfied its obligation to do so by paying to the person a sum of $25 for each unit in accordance with section 178A(2)(b)(ii) or (iii), then the Registrar must—

(a) transfer from the appropriate surrender account to the person's holding account held for the purpose of section 61(1) a number of New Zealand

units equal to the number of units for which the EPA paid the person a sum of $25 for each unit; and

(b) immediately following the transfer under paragraph (a), transfer the New Zealand units from the person's holding account to a cancellation account.

(4) For the avoidance of doubt, section 68 does not apply in respect of any New Zealand units issued under this section.

(5) If subsection (1) applies, this Act applies with any necessary modification as if the payment of $25 for a unit by a person and the transfer of a unit to a surrender account by the Registrar under this section were a surrender of a unit by the person.

(6) Despite anything in section 18CA(4), a New Zealand unit that is transferred to a surrender account under subsection (1)(c) may be further transferred in accordance with subsection (3)(a).

Section 178B: inserted, on 1 January 2013, by section 71 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 178C Prohibition on ability to export New Zealand units

(1) Despite anything in this Act,—

(a) an account holder may not apply to the Registrar under section 30E(1)(a) to convert a New Zealand unit held by that person into a designated assigned amount unit for the purposes of transferring that assigned amount unit to an account in an overseas registry; and

(b) the Registrar must not transfer to an account in an overseas registry under section 18C—

(i) New Zealand units; or

(ii) designated assigned amount units that have been converted from New Zealand units under section 30E(3) before the commencement of this section.

(2) This section does not apply to New Zealand units—

(a) in respect of activities listed in Part 1 of Schedule 4; or

(b) transferred in accordance with a determination of the Minister under section 77 or 78 that relates to an allocation under the pre-1990 forest land allocation plan; or

(c) received under the Forests (Permanent Forest Sink) Regulations 2007.

Section 178C: inserted, on 1 January 2013, by section 71 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

# Part 5
# Sector specific provisions

Part 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 1—Forestry sector

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *General*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 179 Forest land to be treated as deforested in certain cases

(1) Without limiting paragraph (a) of the definition of deforest in section 4(1), a hectare of forest land must be treated as deforested for the purposes of this Act if the forest species on that hectare have been cleared and,—

(a) 4 years after clearing, the hectare has not—

(i) been replanted with at least 500 stems of forest species; or

(ii) regenerated a cover of at least 500 stems of exotic forest species; or

(iii) been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion; or

(iv) regenerated predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or

(b) 10 years after clearing,—

(i) predominantly exotic forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height; or

(ii) predominantly indigenous forest species are growing, but that hectare is not forest land; or

(c) 20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height.

(1A) Subsection (1)(a)(iii) applies only if the EPA is satisfied that the relevant local authority has determined that the soil erosion risk of the land is at least moderate.

(2) If forest land is to be treated as deforested under subsection (1),—

(a) the deforestation is to be treated as having been carried out 4 years, 10 years, or 20 years, after the clearing of the forest species, as the case may be; but

(b) the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees cleared 4 years, 10 years, or 20 years earlier, as the case may be.

(3) Nothing in this section limits the EPA's ability to exercise powers under section 121 in respect of the deforestation of a hectare of forest land whenever the EPA considers that—

(a) the hectare has been converted to land that is not forest land; and

(b) any obligations imposed under this Act in respect of the deforestation have not been complied with.

Section 179: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 179(1): replaced, on 1 January 2013, by section 72 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 179(1A): inserted, on 1 January 2013, by section 72 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 179(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 179A Forest land may not be treated as deforested in certain cases

(1) Despite section 179 and the definition of deforest in section 4(1),—

(a) in the case of pre-1990 forest land, pre-1990 forest land that is cleared may not be treated as deforested for the purposes of this Act if the cleared land is exempt land or—

(i) is contiguous with the edge of pre-1990 forest land that existed on 31 December 2007; and

(ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and

(iii) is required to be or remain cleared to implement New Zealand's best practice forest management; and

(iv) is used only for the purpose of implementing New Zealand's best practice forest management:

(b) in the case of pre-1990 forest land that is the subject of an offsetting forest land application that the EPA has approved under section 186B, the pre-1990 forest land that is cleared may not be treated as deforested if cleared,—

(i) in the case where the land is converted to a use other than forest land (for example, dairy), in the period—

(A) beginning on the date that the approval is given; and

(B) ending with the earlier of 2 years after the date that the approval was given or 4 years after the date that the pre-1990 forest land was cleared; or

(ii) in the case where the land is not converted to another land use and remains forest land, in the period—

(A) beginning on the date that the pre-1990 forest land was cleared; and

(B) ending 4 years after the date that the pre-1990 forest land was cleared:

(c) in the case of post-1989 forest land, the post-1989 forest land that is cleared may not be treated as deforested if the cleared land—

(i) is contiguous with the edge of post-1989 forest land that existed on the date of registration; and

(ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and

(iii) is required to be or remain cleared to implement New Zealand's best practice forest management; and

(iv) is used only for the purpose of implementing New Zealand's best practice forest management.

(2) Subsection (1)(b) does not apply if the EPA revokes its approval of an offsetting forest land application under section 186G(1).

(3) This section applies to land that was cleared before, on, or after the commencement of this section.

Section 179A: inserted, on 1 January 2013, by section 73 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

*Pre-1990 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 180 Participant in respect of pre-1990 forest land

(1) If the activity listed in Part 1 of Schedule 3 is carried out, the landowner of the pre-1990 forest land is to be treated as the person carrying out the activity unless the EPA is satisfied that—

(a) the right to decide to deforest the pre-1990 forest land was vested by the landowner in a third party, whether before or after 1 January 2008; and

(b) the landowner had no control over the decision.

(2) If the EPA is satisfied that the criteria specified in subsection (1)(a) and (b) are met, the third party is to be treated as the person carrying out the activity.

(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.

Section 180: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 180(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 180(1)(a): amended, on 1 January 2013, by section 74 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 180(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 181 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 180(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.

(4) This section applies only if section 4(5) does not apply.

(5) This section does not apply to pre-1990 forest land that is the subject of an offsetting forest land application that the EPA has approved under section 186B.

Section 181: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 181(4): added, on 8 December 2009, by section 60 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 181(5): inserted, on 1 January 2013, by section 75 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 182 Offsetting in relation to pre-1990 forest land

*[Repealed]*

Section 182: repealed (without coming into force), on 1 January 2013, by section 76 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 183 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land

(1) 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 72; 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 72 at the date of the land's conversion.

(2) A person to whom this section applies may apply to the EPA for the area of pre-1990 forest land to be declared exempt land if—

(a) the area is less than 50 hectares; and

(b) the area was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land; and

(c) no allocation of units to a landowner has been made in respect of the area under an allocation plan under section 72.

(3) An application under subsection (2) must—

(a) be submitted to the EPA by—

(i) the date prescribed by regulations made under section 168(1)(ca); or

(ii) in the absence of a date prescribed by regulations made under section 168(1)(ca), the date specified by public notice given by the EPA; and

(b) be in the prescribed form and accompanied by the prescribed fee (if any); and

(c) contain details of the area of pre-1990 forest land to which the application relates; and

(d) be accompanied by evidence showing that the land is pre-1990 forest land; and

(e) be accompanied by a statutory declaration,—

(i) in the case of land owned by a sole professional trustee or owned by professional trustees only, from the trustee of the trust that is the subject of the exemption application stating that the total of pre-1990 forest land held in the trust on 1 September 2007—

(A) was less than 50 hectares; and

(B) was owned by a sole professional trustee or owned by professional trustees only:

(ii) in any other case, from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) stating that the person, together with any persons associated with that person, owned less than a total of 50 hectares of pre-1990 forest land on 1 September 2007; and

(f) be signed by the applicant; and

(g) be accompanied by any other prescribed information.

(4) If the EPA is satisfied that the applicant is a person to whom this section applies, the land is pre-1990 forest land, and each of the criteria specified in subsection 2(a) to (c) is met, the EPA must—

(a) declare the land to be exempt land; and

(b) notify the applicant that the land has been declared exempt land.

(5) Despite subsection (3)(a), the EPA may, at its discretion, accept applications after the date specified in the public notice given under subsection (3)(a)(ii) or prescribed by regulations under section 168(1)(ca).

(6) The following rules apply for the purposes of determining, under subsection (2)(b), whether an area of pre-1990 forest land was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land:

(a) the EPA must consider only pre-1990 forest land in respect of which the person or associated person was a landowner on 1 September 2007; and

(b) if land was owned by persons as joint tenants,—

(i) in the case where 1 or more of the joint tenants is a professional trustee, each of the joint tenants other than the professional trustee or trustees must individually have been a landowner of less than 50 hectares of pre-1990 forest land; or

(ii) in the case where none of the joint tenants is a professional trustee, each of the joint tenants must individually have been a landowner of less than 50 hectares of pre-1990 forest land; and

(c) if land was owned by persons as tenants in common, each tenant in common's interest in the land is to be treated as a divided interest on 1 September 2007; and

(d) if land was owned by a sole professional trustee or owned by professional trustees only, the total pre-1990 forest land held in the trust on 1 September 2007 was less than 50 hectares.

(7) For the purposes of this section,—

**own**, in relation to pre-1990 forest land, means to be a landowner of the land

**professional trustee**—

(a) means a trustee whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others; and

(b) includes a trustee in whom property is vested under Te Ture Whenua Maori Act 1993.

Section 183: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 183(1)(a): amended, on 8 December 2009, by section 61(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 183(1)(b): amended, on 8 December 2009, by section 61(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 183(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(2)(c): amended, on 8 December 2009, by section 61(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 183(3): amended, on 1 July 2009, by section 5(1) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(3)(a): substituted, on 1 July 2009, by section 5(2) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(3)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(3)(a)(ii): amended, on 8 December 2009, by section 61(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 183(3)(e): replaced, on 1 January 2013, by section 77(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(5): amended, on 1 January 2013, by section 77(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(5): amended, on 1 July 2009, by section 5(3) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(6)(c): amended, on 1 January 2013, by section 77(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(6)(d): inserted, on 1 January 2013, by section 77(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(7) **professional trustee**: replaced, on 1 January 2013, by section 77(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 183A Certain applications not otherwise permitted by section 183

(1) Despite section 183(2)(c) and (3)(a), a person may make an application under section 183 by 31 December 2013 if—

(a) the area concerned was owned, as at 1 September 2007, by a sole professional trustee or by professional trustees only; and

(b) an allocation of units has been made before the commencement of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 in respect of the area under an allocation plan under section 72.

(2) If the EPA proposes to accept the application, the EPA must notify the applicant that—

(a) it proposes to accept the application; but

(b) the applicant must first, within 30 working days after receiving the notice, surrender or repay to the Crown holding account specified in the notice the number of New Zealand units specified in the notice; and

(c) if the units are not surrendered or repaid in accordance with paragraph (b), then the application will be declined.

(3) The units referred to in subsection (2) must be the same number of units that have been allocated and transferred under an allocation plan under section 72 in relation to the land concerned.

(4) The EPA must,—

(a) accept the application and declare the area concerned to be exempt land if, by the expiry of the 30 days, the units have been surrendered or repaid; or

(b) decline the application if, by the expiry of the 30 days, the units have not been surrendered or repaid.

(5) To avoid doubt,—

(a) section 183 (as amended by the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012) otherwise applies to an application permitted by this section, but subject to the modifications made by this section; and

(b) if an application is granted and an area is declared to be exempt land, the entitlement to units under the allocation plan in respect of the land is cancelled.

Section 183A: inserted, on 1 January 2013, by section 78 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 184 Exemptions for deforestation of land with tree weeds

(1) The EPA may give public notice that exemptions are available in relation to the deforestation of pre-1990 forest land if—

(a) a forest species growing on the land, or that was cleared from the land as part of the deforestation process on or after 1 January 2008, is or was a specified type of tree weed; and

(b) no allocation of units to a landowner has been made in respect of the land under the pre-1990 forest land allocation plan.

(2) A notice given under subsection (1) must include—

(a) the types of tree weeds in respect of which exemptions may be available; and

(b) the criteria and priorities by which exemptions will be assessed, which may include the type of tree weed, the location of forest land, or any other matter; and

(c) the date by which applications for exemptions under this section must be received by the EPA; and

(d) the number of whole tonnes of emissions from the deforestation of the specified types of tree weed that will be covered by exemptions granted in relation to the notice.

(3) If a notice has been given under subsection (1), the landowner of pre-1990 forest land on which there is or was a specified type of tree weed or, in the circumstances referred to in section 180, a third party may apply to the EPA for the land to be declared exempt land.

(4) An application for an exemption under subsection (3) must—

(a) be submitted to the EPA before the date notified under subsection (2)(c); and

(b) be in the prescribed form and accompanied by the prescribed fee (if any); and

(c) contain details of the land to which the application relates; and

(d) be accompanied by evidence that—

(i) the land is pre-1990 forest land; and

(ii) a forest species growing on the land, or that grew on the land before it was cleared as part of the deforestation process, is or was a specified type of tree weed; and

(e) be signed by the applicant; and

(f) be accompanied by any other prescribed information.

(5) The EPA must consider every application received under subsection (4) against the criteria, and priorities in, and the number of whole tonnes of emissions that are to be covered by exemptions granted in respect of, 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 EPA declares any land to be exempt land, notify the applicant accordingly.

(6) The clearing of tree weeds on exempt land that has not been cleared before the land was declared exempt land must be—

(a) commenced within 24 months of the date of notification of the exemption; and

(b) completed by the end of—

(i) the first commitment period, if the exemption is granted in that commitment period; or

(ii) any subsequent commitment period in which the exemption is granted; or

(iii) if there is no subsequent commitment period,—

(A) the 5-year period commencing on 1 January 2013, if the exemption is granted in that 5-year period; or

(B) any subsequent 5-year period, after the period in subsubparagraph (A), in which the exemption is granted.

(7) Any land that is declared to be exempt land under this section ceases to be exempt land if either of the conditions specified in subsection (6) is breached.

(8) If a person is convicted of an offence under section 132 or 133 in relation to an application under this section,—

(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

(b) the EPA must make an assessment of the matters that should have been in the person's annual emissions return and the number of units the person would have been liable to surrender if the land had not been exempt land; and

(c) the person is liable to surrender the number of units in the assessment under paragraph (b); and

(d) section 123(1) to (3) and the other provisions of this Act apply as if the assessment under paragraph (b) was an assessment under section 121.

(9) *[Repealed]*

Section 184: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 184(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(1)(a): substituted, on 8 December 2009, by section 62(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(1)(b): substituted, on 8 December 2009, by section 62(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(2)(b): amended, on 8 December 2009, by section 62(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(2)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(2)(c): amended, on 8 December 2009, by section 62(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(2)(d): added, on 8 December 2009, by section 62(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(3): amended, on 8 December 2009, by section 62(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(4)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(4)(d)(ii): substituted, on 8 December 2009, by section 62(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(5): amended, on 8 December 2009, by section 62(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(5)(b): amended, on 8 December 2009, by section 62(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(6): substituted, on 8 December 2009, by section 62(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(8)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(9): repealed, on 1 January 2013, by section 79 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 185 Effect of exemption

The status of pre-1990 forest land as exempt land runs with the land and is not affected by any change in the ownership of the land.

Section 185: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## 186 Methodology for pre-1990 forest land cleared in 8 years or less

(1) Subsection (2) applies where the trees cleared from pre-1990 forest land by a person carrying out the activity in Part 1 of Schedule 3 are 8 years or younger.

(2) If this subsection applies, the participant must,—

(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 163) cleared from the pre-1990 forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); and

(b) surrender units under this Act based on emissions calculated and recorded in accordance with paragraph (a).

(3) A methodology for calculating emissions from the activity in Part 1 of Schedule 3 prescribed in regulations under section 163 must relate to the trees that are cleared from the pre-1990 forest land as part of the deforestation activity.

Section 186: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 186 heading: amended, on 1 January 2013, by section 80(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 186(2)(a): amended, on 1 January 2013, by section 80(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Pre-1990 offsetting forest land*

Heading: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186A Persons who own pre-1990 forest land may submit offsetting forest land applications to EPA

(1) A person who owns pre-1990 forest land may submit an offsetting forest land application to the EPA if that forest land—

(a) was first planted before 1 January 1990; or

(b) was harvested and re-established after 1 January 1960.

(2) If the proposed offsetting forest land and the pre-1990 forest land are owned by the same person, the application must be submitted by that person.

(3) In the case where the proposed offsetting forest land and the pre-1990 forest land are owned by different persons, the application must be submitted jointly by those persons.

(4) To avoid doubt, any pre-1990 forest land cleared, but not deforested, before the commencement of this section is eligible to be offset if that land meets the requirements specified in subsection (1).

Section 186A: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186B Criteria for approving offsetting forest land applications

(1) The EPA must approve land as offsetting forest land if—

(a) the land—

(i) is the subject of an offsetting forest land application that—

(A) is in the prescribed form, and accompanied by the payment of any prescribed fee; and

(B) complies with any relevant regulations made under section 186F; and

(C) is accompanied by any other relevant information that the EPA may require; and

(ii) was—

(A) not forest land on or after 31 December 1989; or

(B) forest land on 31 December 1989 that was deforested between 1 January 1990 and 31 December 2007 and is (at the time the offsetting forest application is made) not forest land; or

(C) pre-1990 forest land (other than exempt land) that was deforested on or after 1 January 2008 and any liability in respect of it to surrender units in relation to the activity listed in Part 1 of Schedule 3 has been satisfied, and is (at the time the offsetting forest application is made) not forest land; or

(D) pre-1990 forest land (other than exempt land) that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land, and is (at the time the offsetting forest application is made) not forest land; or

(E) exempt land that has been deforested and in respect of which the number of units that would have been required to be surrendered in relation to the activity in Part 1A of Schedule 3 had the land not been exempt land has been surrendered, and is (at the time the offsetting forest application is made) not forest land; and

(b) the land is land—

(i) that has a total area (whether or not contiguous) that is equal to or greater than the total area of the pre-1990 forest land that is to be offset by that land (whether or not contiguous); and

(ii) in which each individual parcel that makes up the total area of the offsetting forest land is at least 1 hectare with an average width of at least 30 metres; and

(c) the EPA is satisfied that the land is likely to—

(i) achieve carbon equivalence with the pre-1990 forest land that is to be offset by that land within the usual rotation period for forest species of the pre-1990 forest land; and

(ii) become forest land before the pre-1990 forest land that is to be offset by that land is deforested; and

(d) any other requirements with respect to offsetting specified in this Act or regulations made under this Act are satisfied.

(2) The EPA may decline any application that does not meet all or any of the requirements specified in subsection (1).

Section 186B: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186C Conditions applicable to offsetting forest land

(1) If the EPA approves an offsetting forest land application, the following conditions apply:

(a) the offsetting forest land must—

(i) become forest land before the relevant pre-1990 forest land is deforested; and

(ii) be established by direct planting activities, including direct seeding but excluding natural forest regeneration; and

(iii) be established on the land specified in the application approved by the EPA; and

(iv) achieve carbon equivalence with the relevant pre-1990 forest land:

(b) the owner of the pre-1990 forest land must surrender or repay units if required to do so under section 186H:

(c) any relevant conditions prescribed by regulations made under section 186F must be satisfied.

(2) Subsection (1)(a)(i) is subject to section 179A(1)(b).

Section 186C: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186D Requirements relating to offsetting forest land

(1) A person who owns pre-1990 forest land must submit a declaration to the EPA in the prescribed form, before the end of the relevant period specified in section 179A(1)(b), stating that the offsetting forest land has become forest land.

(2) If the EPA is not satisfied that the land subject to an approved offsetting forest land application has become forest land by the time that the relevant pre-1990 forest land is deforested,—

(a) the application is to be treated as revoked under section 186G; and

(b) the person who owns the pre-1990 forest land must surrender units for the deforested pre-1990 forest land.

(3) If the EPA is satisfied that the offsetting forest land has become forest land by the time that the pre-1990 forest land is deforested, the EPA must, on a register kept for the purposes of this section, note—

(a) that the offsetting forest land is pre-1990 offsetting forest land; and

(b) any conditions placed on that forest land under section 186C or 186F; and

(c) the emissions for the relevant pre-1990 forest land.

(4) The EPA must, upon written request by the person who owns or owned (or who is a prospective transferee of) the relevant pre-1990 offsetting forest land or the relevant pre-1990 forest land, provide a statement containing the information specified in subsection (3) to the person or prospective transferee (as the case may be).

Section 186D: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186E Deforesting pre-1990 offsetting forest land before usual rotation period of forest species on pre-1990 forest land

(1) If the owner of pre-1990 offsetting forest land carries out an activity in Part 1A of Schedule 3 before the usual rotation period for forest species on the relevant pre-1990 forest land is completed, the owner must surrender units equivalent to the emissions for the relevant pre-1990 forest land.

(2) If subsection (1) applies, the EPA must remove the pre-1990 offsetting forest land from the register specified in section 186D(3).

Section 186E: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186F Regulations relating to offsetting

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing the usual rotation period for a forest species:

(b) prescribing any conditions that land that is subject to an offsetting forest land application must meet—

(i) before the EPA may approve the application; and

(ii) after the EPA has approved the application:

(c) prescribing the methodology for determining and calculating carbon equivalence:

(d) providing for any other matters contemplated by sections 186B and 186C, necessary for their administration, or necessary for giving them full effect.

Section 186F: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186G EPA may revoke approval in certain circumstances

(1) The EPA may, in relation to a person specified in section 186A(2) or (3), revoke any approval it has given under section 186B if—

(a) the person fails to comply with section 186C; and

(b) the EPA has not noted on the register specified in section 186D(3) that the offsetting forest land is pre-1990 offsetting forest land.

(2) If the EPA revokes an approval, the provisions of this Act, other than section 179A(1)(b), apply to the relevant pre-1990 forest land as if the relevant offsetting forest application had not been made.

Section 186G: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186H Treatment of allocations in respect of pre-1990 forest land that is offset

(1) This section applies to any owner of pre-1990 forest land—

(a) that was the subject of an offsetting forest land application approved under section 186B; and

(b) to which an allocation was made under an allocation plan (before or after the commencement of this section).

(2) If this section applies, the owner of the pre-1990 forest land must, within 30 working days of the date of notice given by the EPA,—

(a) open a holding account under section 18A that has been approved by the Registrar if the owner does not have one; and

(b) surrender or repay New Zealand units equivalent to the portion of New Zealand units that are allocated, as part of the second tranche, to the pre-1990 forest land that is offset by transferring them to a Crown holding account (whether or not the allocation was actually transferred when allocated).

(3) The notice referred to in subsection (2) must specify—

(a) the number of New Zealand units that must be repaid; and

(b) the Crown holding account to which the units must be transferred.

(4) If the owner of the pre-1990 forest land complies with subsection (2), but approval is revoked under section 186G or treated as revoked under section 186D(2)(a), the EPA must, in accordance with section 124, reimburse the owner for any New Zealand units that the owner has surrendered or repaid under subsection (2).

(5) The EPA must, upon written request by a person who owns or owned (or is a prospective transferee of) pre-1990 forest land, provide a statement to the person or prospective transferee (as the case may be) about an allocation (if any) made under an allocation plan.

(6) For the purposes of subsection (2), **second tranche**, in relation to an allocation, means the New Zealand units that are allocated under section 72(3)(a)(ii), (b)(ii), or (c)(ii) to a person under an allocation plan in respect of the pre-1990 forest land on or after 1 January 2013.

Section 186H: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186I Participant in respect of pre-1990 offsetting forest land

If an activity listed in Part 1A of Schedule 3 is carried out, the landowner of the pre-1990 offsetting forest land is to be treated as the person carrying out the activity.

Section 186I: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 186J Methodology for pre-1990 offsetting forest land cleared after usual rotation period is completed

(1) Subsection (2) applies where the trees cleared from pre-1990 offsetting forest land by a person carrying out the activity in Part 1A of Schedule 3 after the usual rotation period is completed are 8 years or younger.

(2) If this subsection applies, the participant must,—

(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 offsetting forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under section 163 or 186F) cleared from the pre-1990 offsetting forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); and

(b) surrender units under this Act based on emissions calculated and recorded in accordance with paragraph (a).

(3) A methodology for calculating emissions from the activity in Part 1A of Schedule 3 prescribed in regulations under section 163 or 186F must relate to the trees that are cleared from the pre-1990 offsetting forest land as part of the deforestation activity.

Section 186J: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## *Post-1989 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 187 Conditions on registration as participant in respect of certain activities relating to post-1989 forest land

(1) A person may not be registered as a participant under section 57 in respect of an activity listed in Part 1 of Schedule 4 that relates to—

(a) owning any post-1989 forest land, unless the person is the landowner of the post-1989 forest land and—

(i) there is no forestry right or lease registered in respect of that land; or

(ii) the person has the written agreement of any holder of a registered forestry right or registered lease in respect of that land to the person registering as a participant; or

(b) holding a registered forestry right or being the leaseholder under a registered lease in respect of any post-1989 forest land, unless the person,—

(i) is the holder of the registered forestry right or the leaseholder of the registered lease; and

(ii) has the written agreement of the landowner of the land to the forestry right holder or leaseholder, as the case may be, registering as a participant.

(2) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in relation to exempt land that has been deforested unless the person—

(a) has submitted an emissions return to the EPA that—

(i) records the emissions from the deforestation of the land—

(A) that would have been required to have been recorded in an annual emissions return under section 65, had the land not been declared to be exempt land; and

(B) calculated in accordance with the methodology or methodologies prescribed for the deforestation activity listed in Part 1 of Schedule 3 that were applicable when the land was deforested; and

(ii) contains an assessment of the liability to surrender units that would have arisen in relation to the deforestation had the land not been declared to be exempt land; and

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

(iv) is signed by the person submitting the application; and

(b) has surrendered, within 20 working days of submission of the emissions return under paragraph (a), the number of units listed in the assessment under paragraph (a)(ii); and

(c) complies with subsection (1), if applicable.

(3) To avoid doubt, 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.

(4) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land unless—

(a) any action taken by the person in respect of the post-1989 forest land since 1 January 2008 (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949 that was in force at the time the action was taken; and

(b) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the person—

(i) has complied with the requirements; or

(ii) verified that any other person required to comply with the requirements has done so.

(5) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in relation to post-1989 forest land where the forest species on the land is predominantly naturally regenerated tree weeds unless the EPA is satisfied that the risk of tree weed spread from the land that is the subject of the application for registration is low.

(6) Subsection (5) does not apply to any person who has registered as a participant before the commencement of this section.

Section 187: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 187(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 187(3): amended, on 8 December 2009, by section 63(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 187(4): added, on 8 December 2009, by section 63(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 187(4)(b): amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 187(5): inserted, on 1 January 2013, by section 82 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 187(6): inserted, on 1 January 2013, by section 82 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 187A EPA to give public notice of criteria for assessing risk of tree weed spread

The EPA must give public notice of the criteria for assessing the risk of tree weed spread from land that is the subject of an application for registration under section 57.

Section 187A: inserted, on 1 January 2013, by section 83 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 188 Registration as participant in respect of post-1989 forest land

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 1 of Schedule 4—

(a) may be submitted for all post-1989 forest land in respect of which the applicant carries out the activity, or any part of the land in respect of which the applicant carries out the activity; and

(b) must define the carbon accounting area or areas in respect of which the applicant wishes to be a participant; and

(c) must be accompanied by a declaration, in the prescribed form, that—

(i) any action taken by the applicant since 1 January 2008 in relation to the post-1989 forest land in respect of which the application is submitted (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949, that was in force at the time the action was taken; and

(ii) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the applicant has—

(A) complied with the requirements; or

(B) verified that any other person required to comply with the requirements has done so; and

(d) must be accompanied by any information prescribed by regulations made under this Act.

(2) The EPA must, for every person who is a participant in respect of an activity listed in Part 1 of Schedule 4, keep a record of—

(a) the carbon accounting area or areas in respect of which the person is a participant; and

(b) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated in accordance with section 190(2).

(3) A person who is a participant in respect of an activity listed in Part 1 of Schedule 4—

(a) may apply to the EPA to—

(i) add or remove any carbon accounting area or areas 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 any carbon accounting area or areas in respect of which the person is recorded as a participant; and

(b) must, as soon as practicable, notify the EPA if—

(i) 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; or

(ii) the post-1989 forest land in respect of which the person carries out the activity, or any part of the land in which the person carries out the activity, is affected by a natural event that permanently prevents re-establishing a forest on that land.

(4) An application or a notice under subsection (3) must be—

(a) in the prescribed form; and

(b) accompanied by any prescribed fee and any prescribed information.

(5) The EPA 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 187.

(6) If the EPA—

(a) registers a person as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4, the EPA must notify under section 57(6)(b),—

(i) if section 187(1)(a) applies, any person with a registered forestry right or registered lease in respect of the post-1989 forest land; or

(ii) if section 187(1)(b) applies, the landowner of the post-1989 forest land; or

(b) receives an application to add a carbon accounting area and is satisfied as to the matters specified in subsection (5), the EPA 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

(iii) notify the participant accordingly.

(7) If the EPA receives—

(a) an application under section 58 for the removal of a person's name from the register as a participant in relation to an activity listed in Part 1 of Schedule 4, or is satisfied under section 59(2) that the person has ceased to carry out the activity, the EPA must—

(i) notify under section 58(3)(c) or 59(2)(b),—

(A) if the landowner is the participant, the holder of any 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

(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):

(b) an application to remove a carbon accounting area, or remove land from a carbon accounting area in respect of which a 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, the EPA must—

(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

(ii) update the participant's record to reflect,—

(A) if a carbon accounting area is removed or the person has ceased to carry out the activity in respect of all of the carbon accounting area, the removal of the carbon accounting area from the post-1989 forest land in respect of which the person is recorded as a participant; or

(B) if land has been removed from a carbon accounting area or the person has ceased to carry out the activity in respect of part of a carbon accounting area, a new carbon accounting area constituted from the remaining land and the unit balance of the new carbon accounting area determined in accordance with section 190(3)(b); and

(iii) notify the participant accordingly.

(7A) If the EPA is notified under subsection (3)(b)(ii), the EPA must, if satisfied that the post-1989 forest land is affected by a natural event that permanently prevents re-establishing a forest on that land, comply with the requirements specified in subsection (7)(b)(i) to (iii).

(8) A change made to the participant's record under subsection (6)(b)(ii) or (7)(b)(ii) has effect on and after the date of the relevant notice given under subsection (6)(b)(iii) or (7)(b)(iii), as the case may be.

(9) Subsection (10) applies if a person terminates a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of the post-1989 forest land that was covered by the covenant.

(10) If this subsection applies,—

(a) despite section 57(8), the person registering as a participant is to be treated as being a participant in respect of the land formerly the subject of the covenant on and after the date the covenant was registered on the land under section 67ZD of the Forests Act 1949; and

(b) for the purposes of sections 189 to 194, any units transferred by or to the Crown in respect of the post-1989 forest land while it was the subject of the forest sink covenant must be treated as New Zealand units transferred for removals or surrendered for emissions from the land under this Act; and

(c) the post-1989 forest land formerly the subject of the covenant constitutes a single carbon accounting area in respect of which the person is registered as a participant for the purposes of subsection (2).

Section 188: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 188(1)(c): substituted, on 8 December 2009, by section 64(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(1)(c)(ii): amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 188(2): substituted, on 8 December 2009, by section 64(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(3)(a)(i): amended, on 8 December 2009, by section 64(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(3)(a)(ii): amended, on 8 December 2009, by section 64(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(3)(b): replaced, on 1 January 2013, by section 84(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 188(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(6)(b)(ii): substituted, on 8 December 2009, by section 64(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(6)(b)(iii): added, on 8 December 2009, by section 64(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(7)(b)(ii): substituted, on 8 December 2009, by section 64(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(7)(b)(iii): added, on 8 December 2009, by section 64(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(7A): inserted, on 1 January 2013, by section 84(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 188(8): substituted, on 8 December 2009, by section 64(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(9): substituted, on 8 December 2009, by section 64(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(10): added, on 8 December 2009, by section 64(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 188A Person ceases to be participant in respect of post-1989 forest land if natural event permanently prevents re-establishing forest on that land

If post-1989 forest land is affected by a natural event that permanently prevents re-establishing a forest on that land,—

(a) a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 ceases to be a participant in respect of the affected carbon accounting area or affected land in that carbon accounting area; and

(b) the person is to be treated as having ceased to carry out the activity listed in Part 1 of Schedule 4 when given notice by the EPA under section 188(7)(b)(iii).

Section 188A: inserted, on 1 January 2013, by section 85 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 189 Emissions returns for post-1989 forest land activities

(1) This section applies to a person who is a participant in respect of an activity listed in Part 1 of Schedule 4.

(2) A person to whom this section applies—

(a) must not submit an annual emissions return under section 65 or an emissions return under section 118 in relation to that activity; and

(b) may submit an emissions return in accordance with subsection (3) in relation to that activity; and

(c) must submit any emissions return required by subsection (4) or section 191 or 193 in respect of that activity; and

(d) may submit an emissions return in accordance with subsection (4A), if—

(i) the person is considering entering into a transaction described in section 192(1)(a) or (b); or

(ii) the expiry of an interest referred to in section 192(1)(c) is imminent; or

(iii) within 20 working days of applying under section 188(3)(a)(i) to remove a carbon accounting area from the land in respect of which the person is recorded as carrying out an activity listed in Part 1 of Schedule 4 or being removed from the register as a participant in respect of all the land in respect of an activity listed in Part 1 of Schedule 4, the person applies to—

(A) add a carbon accounting area or areas consisting of all the post-1989 forest land that was the subject of the application under section 188(3)(a)(i); or

(B) register as a participant under section 57 in relation to all the post-1989 forest land in respect of which the person had ceased to be registered as a participant.

(3) A person to whom this section applies may, on 1 occasion, on or before 30 June in any year, submit an emissions return that—

(a) relates to the preceding year or years; and

(b) is in respect of any or all of the carbon accounting areas in respect of which the person is recorded as a participant; and

(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

(BA) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); 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.

(4) A person to whom this section applies must, if registered as a participant on the last day of any mandatory emissions return period, within 6 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; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(D) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under subsection (4A), if an emissions return has been submitted under that subsection in relation to the carbon accounting area during the mandatory emissions return period; and

(ii) ending on the last day of the mandatory emissions return period that has just ended.

(4A) A person to whom this section applies may, in the circumstances in subsection (2)(d), submit an emissions return in respect of any carbon accounting area to which a proposed transaction, or expiry of an interest, or an application under section 58, 59, or 188(3)(a)(i) relates that is in respect of the period—

(a) commencing on the latest of—

(i) the first day of the mandatory emissions return period in which the return is submitted; or

(ii) the date on which the land in the carbon accounting area became post-1989 forest land; or

(iii) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(iv) if an emissions return has already been submitted under this subsection in relation to the carbon accounting area during the mandatory emissions return period, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under this subsection; and

(b) ending on the date of submission of the emissions return.

(5) An emissions return submitted under subsection (3), (4), or (4A)—

(a) must, in respect of each carbon accounting area covered by the return,—

(i) record the activity in respect of which the person is recorded as a participant for the carbon accounting area; and

(ii) record the emissions and removals from the carbon accounting area during the emissions return period as calculated under section 62(b) and, if required, as verified under section 62(c); and

(iii) contain an assessment of the participant's gross liability to surrender units for emissions or entitlement to receive New Zealand units for removals from the carbon accounting area that takes into account sections 188(10) and 190(1), but does not take into account any returns under subsection (3) that cover part of the same period as the emissions return; and

(iv) contain the information required by subsection (6), if relevant; and

(v) contain an assessment of the participant's net liability to surrender units in respect of emissions or entitlement to receive New Zealand units for removals from the carbon accounting area during the emissions return period, taking into account sections 188(10) and 190(1) and subsections (6) and (7); 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 in respect of all carbon accounting areas covered by the return, as referred to in subsection (8); and

(c) must be—

(i) accompanied by—

(A) the prescribed fee (if any); and

(B) any prescribed information; and

(ii) signed by the participant; and

(iii) submitted in the prescribed manner and format.

(6) If a person submits an emissions return under subsection (4) that covers a carbon accounting area in respect of a period for which a return has already been submitted under subsection (3), the return submitted under subsection (4) 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 (3); 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 (3) (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 gross 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 (4) as recorded under subsection (5)(a)(iii).

(7) If the assessment referred to in subsection (6)(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 (4) than the net units that have been transferred in respect of returns under subsection (3), the person is liable to repay the number of units transferred in excess of the entitlement in the return under subsection (4); or

(b) entitled to receive more units for removals from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units that have been transferred in respect of returns under subsection (3), the person is entitled to receive the number of units that is the difference between the entitlement in respect of the return under subsection (4) and the net number of units already transferred in respect of returns under subsection (3); or

(c) liable to surrender more units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), 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 (4); or

(d) liable to surrender fewer units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), the EPA must arrange for reimbursement to the person, in accordance with section 124, 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 (4).

(7A) Subsections (6) and (7) apply to a return submitted under subsection (4A) as if it were a return submitted under subsection (4).

(8) 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 EPA, and the provisions of sections 134 and 135 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 125.

(8A) Despite subsection (8)(d), a person who submits an emissions return under this section that shows a liability or a net liability is under no obligation to surrender units if—

(a) the emissions return is in respect of post-1989 forest land; and

(b) that land is affected by a natural event that permanently prevents re-establishing a forest on that land.

(9) 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 (3), 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 (8)

**units transferred for removals**, in relation to an emissions return under subsection (3), 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 (8).

Section 189: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 189(2)(c): amended, on 8 December 2009, by section 65(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(2)(d): added, on 8 December 2009, by section 65(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(2)(d)(iii): amended, on 1 January 2013, by section 86(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(3): amended, on 1 January 2013, by section 86(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(3): amended, on 8 December 2009, by section 65(2)(a) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(3): amended, on 8 December 2009, by section 65(2)(b) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(3)(c)(i)(BA): inserted, on 8 December 2009, by section 65(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4): amended, on 1 January 2013, by section 86(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(4)(b)(i)(B): amended, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4)(b)(i)(C): added, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4)(b)(i)(D): added, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4A): inserted, on 8 December 2009, by section 65(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(5): substituted, on 8 December 2009, by section 65(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(6)(b)(ii): amended, on 8 December 2009, by section 65(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(6)(b)(ii): amended, on 8 December 2009, by section 65(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(7)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 189(7A): inserted, on 8 December 2009, by section 65(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(8)(d)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 189(8A): amended, on 1 January 2013, by section 86(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 190 Special rules regarding surrender of units in relation to post-1989 forest land

(1) Despite section 63, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 is not liable to surrender more units in relation to any carbon accounting area or part of a carbon accounting area than the unit balance of that carbon accounting area or part of a carbon accounting area.

(2) The unit balance of a carbon accounting area must be calculated in accordance with the following formula:

$$UB = (A - B) + OUB$$

where—

UB is the unit balance of the carbon accounting area

A is the net number of New Zealand units transferred for removals from the carbon accounting area since the date it was constituted (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8))

B is the net number of New Zealand units surrendered for emissions from the carbon accounting area since the date it was constituted (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7))

OUB is,—

(a) if the carbon accounting area is constituted from land from another carbon accounting area (following the removal of land from a carbon accounting area, or transmission of an interest as defined in section 192), the opening unit balance of the carbon accounting area, as determined in accordance with subsection (3); or

(b) if the carbon accounting area is not constituted as described in paragraph (a), but is constituted from land that was subject to a forest sink covenant under section 67ZD of the Forests Act 1949, the net number of units transferred in respect of the land in the carbon accounting area while it was the subject of the forest sink covenant; or

(c) if the carbon accounting area is not constituted from land from another carbon accounting area or land that was subject to a forest sink covenant, zero.

(3) The following provisions apply if a person is required by this subpart to calculate the unit balance of a newly constituted carbon accounting area:

(a) if a carbon accounting area (**CAA2**) has been constituted under section 192(3)(b)(iii) from the land remaining in an affected carbon accounting area (**CAA1**) following transmission of an interest in part of the CAA1, the person must calculate the opening unit balance of CAA2 in accordance with subsection (4), and for the purposes of that calculation—

(i) H is the number of hectares of post-1989 forest land in CAA1; and

(ii) Hp is the number of hectares of post-1989 forest land in CAA2; and

(iii) UB is the unit balance of CAA1 calculated in accordance with subsection (2) (and includes any units transferred or surrendered in respect of the removals or emissions reported in the emissions return submitted under section 193(1)); and

(iv) UBp is the opening unit balance for CAA2 for the purposes of subsection (2):

(b) if a carbon accounting area (**CAA2**) has been constituted under section 188(7)(b)(ii)(B) from the land remaining in a carbon accounting area (**CAA1**) because the person has removed land from CAA1 or ceased carrying out an activity listed in Part 1 of Schedule 4 in respect of part of CAA1, the opening unit balance of CAA2 is the figure calculated under section 191(4) for $UB_r$ for the purposes of the person's emissions return under section 191(3):

(c) if a carbon accounting area (**CAA2**) has been constituted by operation of section 192(3)(b)(ii), the person must calculate the opening unit balance of CAA2 by—

(i) calculating the unit balance of any whole carbon accounting areas that form part of CAA2 in accordance with subsection (2), including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and

(ii) calculating the unit balance of any part carbon accounting area that forms part of CAA2 in accordance with subsection (4), and for the purposes of that calculation—

(A) H is the number of hectares of post-1989 forest land in the carbon accounting area of which the part carbon accounting

area formed a part before the transmission of the interest; and

(B) Hp is the number of hectares of post-1989 forest land in the part carbon accounting area; and

(C) UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest, including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and

(iii) adding together the unit balances obtained under subparagraphs (i) and (ii).

(4) The unit balance of part of a carbon accounting area must be calculated in accordance with the following formula:

$$UBp = UB/H \times Hp$$

where—

UBp is the unit balance of the part of the carbon accounting area

UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part, calculated in accordance with subsection (2)

H is the number of hectares in the carbon accounting area of which the part carbon accounting area formed a part

Hp is the number of hectares in the part of the carbon accounting area for which a unit balance is calculated.

(5) For the purposes of this section,—

(a) 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 189(8); and

(b) the date that a carbon accounting area is constituted is—

(i) the date the person's registration as a participant in respect of the activity in the application took effect in accordance with section 57(8) for a carbon accounting area defined in an application referred to in section 188(1); and

(ii) the date the participant's record is updated under section 188(6) or (7) for a carbon accounting area where land has been removed from a carbon accounting area, a person has ceased to carry out the activity on part of a carbon accounting area, or a person has

applied to add a carbon accounting area under section 188(3)(a)(i); and

(iii) the date the carbon accounting area was constituted under that section for a carbon accounting area constituted by operation of section 192(3)(b); and

(c) **hectare** includes any fraction of a hectare.

Section 190: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 191 Ceasing to be registered as participant in respect of post-1989 forest land

(1) Subject to section 193, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4—

(a) must submit an emissions return to the EPA within 20 working days of—

(i) being removed from the register in respect of that activity; or

(ii) removing a carbon accounting area or ceasing to be a participant in respect of a carbon accounting area in respect of which the person is recorded as a participant under section 188; or

(iii) removing land from a carbon accounting area or ceasing to carry out the activity in respect of part of a carbon accounting area in respect of which the person is recorded as a participant under section 188; and

(b) is, in respect of any carbon accounting area,—

(i) required to be covered by the return under subsection (2), liable to surrender the unit balance of the carbon accounting area; and

(ii) required to be covered by the return under subsection (3),—

(A) liable to surrender the unit balance relating to any land removed from the carbon accounting area or on which the person has ceased to carry out the activity, plus or minus any units that the person is required to surrender for emissions or entitled to receive for removals in respect of the land remaining in the carbon accounting area, as calculated under subsection (4); or

(B) entitled to receive the number of units assessed as the participant's entitlement for removals from the land remaining in the carbon accounting area, less the unit balance relating to any land removed from the carbon accounting area or upon which the person has ceased to carry out the activity, calculated under subsection (4); and

(c) must, despite section 63, use only New Zealand units to surrender the unit balance that the person is liable to surrender under paragraph (b).

(1A) The purpose of subsection (1)(c) is to prevent reregistration arbitrage, which was an unintended consequence in the operation of the Act before the commencement of subsection (1)(c) and arose from significant differences between the price of New Zealand units and the price of certain Kyoto units.

(2) An emissions return submitted under this section—

(a) must,—

(i) if subsection (1)(a)(i) applies, be in respect of all the carbon accounting areas in respect of which the person is or was recorded as a participant in relation to that activity; or

(ii) if subsection (1)(a)(ii) applies, be in respect of the carbon accounting area or areas being removed in respect of which the person is ceasing to be a participant; and

(b) must record the unit balance of each carbon accounting area required to be covered by the return under paragraph (a), calculated in accordance with section 190(2).

(3) An emissions return submitted under this section because subsection (1)(a)(iii) applies must—

(a) be in respect of each carbon accounting area from which land is removed or in respect of which the person is ceasing to carry out the activity on part of the land in the carbon accounting area; and

(b) for each carbon accounting area required to be covered by the return under paragraph (a), be for the period,—

(i) commencing on the latest of—

(A) the first day of the mandatory emissions return period (as defined in section 189(9)) in which the land was removed from the carbon accounting area (or the person ceased to carry out the activity on part of the land in the carbon accounting area); or

(B) the date on which the land in the carbon accounting area became post-1989 forest land; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(D) if an emissions return has been submitted under section 189(4A) in relation to the carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and

(ii) ending on the date the land is removed from the carbon accounting area or the person ceases to carry out the activity on part of the land in the carbon accounting area; and

(c) in respect of each carbon accounting area required to be covered by the return under paragraph (a),—

(i) comply with section 189(5)(a) and (6), as if any references in section 189(6) to subsection (4) of that section were references to this section; and

(ii) record the notional unit balance of the carbon accounting area, calculated by taking the unit balance of the carbon accounting area (as calculated under section 190(2)) before submission of the return under this section and, if the assessment recorded in the return under section 189(5)(a)(v) shows the person would be—

(A) entitled to receive units in respect of removals from the carbon accounting area during the emissions return period, adding that number of units to the unit balance; or

(B) liable to surrender units in respect of emissions from the carbon accounting area during the emissions return period, subtracting that number of units from the unit balance; and

(iii) record the person's assessment of the person's net liability to surrender units or entitlement to receive units in respect of the post-1989 forest land being removed from and the land remaining in the carbon accounting area calculated in accordance with subsection (4).

(4) Net liability to surrender units or entitlement to receive units in respect of a carbon accounting area required to be covered by the return under subsection (3)(a) must be calculated in accordance with the following formula:

$$X = UB_{CAA} - UB_r$$

where—

X is,—

(a) if positive, the number of units the person must surrender in respect of the land being removed from the carbon accounting area or upon which the person has ceased to carry out the activity (as adjusted by any units required to be surrendered for emissions, or units to which the person is entitled for removals, from the land remaining in the carbon accounting area); or

(b) if negative, the number of units to which the person is entitled in respect of removals from the land remaining in the carbon accounting area (as adjusted by any units required to be surrendered for the land being removed from the carbon accounting area

or in respect of which the person has ceased to carry out the activity)

$UB_{CAA}$ is the unit balance of the carbon accounting area before the removal of the land and submission of the return under this section, calculated in accordance with section 190(2)

$UB_r$ is the unit balance of the land remaining in the carbon accounting area calculated as follows:

$$UB_r = (NUB_{CAA}/H_{CAA}) \times H_r$$

where—

$NUB_{CAA}$ is the notional unit balance of the carbon accounting area calculated under subsection (3)(c)(ii)

$H_{CAA}$ is the number of hectares in the carbon accounting area before removal of the land or before the person ceased to carry out the activity in respect of part of the land

$H_r$ is the number of hectares in the carbon accounting area, less the number of hectares being removed or in respect of which the person has ceased to carry out the activity.

(5) If a person submits an emissions return under subsection (3), section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section.

(6) Section 189(8) applies, with any necessary modifications, to a person who—

(a) submits an emissions return under this section; or

(b) submits an emissions return in respect of post-1989 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land because subsection (1)(a)(ii) or (iii) applies.

(7) An emissions return submitted under this section must be—

(a) submitted in the prescribed manner and format; and

(b) accompanied by any prescribed fee and any other prescribed information.

Section 191: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 191(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 191(1)(b)(ii)(B): amended (with effect on 16 May 2014), on 20 May 2014, by section 5(1) of the Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30).

Section 191(1)(c): inserted (with effect on 16 May 2014), on 20 May 2014, by section 5(2) of the Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30).

Section 191(1A): inserted (with effect on 16 May 2014), on 20 May 2014, by section 5(3) of the Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30).

Section 191(6): replaced, on 1 January 2013, by section 87 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 192 Effect of transmission of interest in post-1989 forest land

(1) This section applies—

(a) if, subject to section 157A(4), a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part A of the following table transfers, including by way of sale, assignment, or by operation of law, all or any of the interest described in the second column of Part A of the table to a person described in the third column of Part A of the table:

(b) if a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part B of the following table grants an interest or enters into a contract described in the second column of Part B of the table:

(c) if an interest described in the second column of Part C of the following table expires or is terminated, and the person described in the first column of Part C of the table is, in relation to that interest, registered as a participant in respect of an activity listed in Part 1 of Schedule 4:

**Part A**

| Existing participant | Interest transferred | New participant | New activity in Part 1 of Schedule 4 |
|---|---|---|---|
| Landowner of post-1989 forest land | Post-1989 forest land in respect of which the person is recorded as a participant | New land owner | Owning post-1989 forest land |
| Holder of a registered forestry right over post-1989 forest land | Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant | New forestry right holder | Holding a registered forestry right over post-1989 forest land |
| Leaseholder under a registered lease of post-1989 forest land | Registered lease over post-1989 forest land in respect of which the person is recorded as a participant | New lessee | Being the leaseholder under a registered lease of post-1989 forest land |
| Party to a Crown conservation contract | Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant | New party to the Crown conservation contract | Being a party to a Crown conservation contract |

**Part B**

| Existing participant | Interest entered into | New participant | New activity in Part 1 of Schedule 4 |
|---|---|---|---|
| Landowner of post-1989 forest land | Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant | Holder of a registered forestry right over post-1989 forest land | Being the holder of a registered forestry right over post-1989 forest land |
| Landowner of post-1989 forest land | Registered lease of post-1989 forest land in respect of which the person is recorded as a participant | Lessee under a registered lease of post-1989 forest land | Being a lessee under a registered lease of post-1989 forest land |
| Landowner of Crown land that is post-1989 forest land | Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant | Party to the Crown conservation contract | Being a party to a Crown conservation contract |

**Part C**

| Existing participant | Interest expired or terminated | New participant | New activity in Part 1 of Schedule 4 |
|---|---|---|---|
| Holder of a registered forestry right over post-1989 forest land | Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant | Landowner of the post-1989 forest land | Owning post-1989 forest land |
| Leaseholder under a registered lease of post-1989 forest land | Registered lease over post-1989 forest land in respect of which the person is recorded as a participant | Landowner of the post-1989 forest land | Owning post-1989 forest land |
| Party to a Crown conservation contract | Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant | Landowner of the post-1989 forest land | Owning post-1989 forest land. |

(2) In subsections (1) and (3) to (7) and section 193,—

(a) **affected carbon accounting area**—

(i) means a carbon accounting area that contains post-1989 forest land to which a transmitted interest relates; and

(ii) includes, where a transmitted interest relates to post-1989 forest land in part of a carbon accounting area, that carbon accounting area:

(b) each of the persons described in the first column of the table in subsection (1) is a **transferor**:

(c) each of the persons described in the third column of the table in subsection (1) is a **transferee**:

(d) **transmitted interest** means,—

(i) in the circumstances described in subsection (1)(a), the post-1989 forest land, registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is transferred:

(ii) in the circumstances described in subsection (1)(b), the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is granted or entered into:

(iii) in the circumstances described in subsection (1)(c), the interest in the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that has expired or been terminated:

(e) **date of transmission** means,—

(i) in the circumstances described in subsection (1)(a), the date of transfer of—

(A) the post-1989 forest land:

(B) the registered forestry right over post-1989 forest land:

(C) the registered lease of post-1989 forest land:

(D) the Crown conservation contract:

(ii) in the circumstances described in subsection (1)(b), the date of registration of the registered forestry right over post-1989 forest land, the date of registration of the registered lease of post-1989 forest land, or the date the Crown conservation contract is entered into:

(iii) in the circumstances described in subsection (1)(c), the date that the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract expires or is terminated.

(3) If this section applies, then,—

(a) within 20 working days of the date of transmission of the transmitted interest,—

(i) the transferor and transferee must notify the EPA of the transmission; and

(ii) the transferor must submit an emissions return as required by section 193 in relation to any affected carbon accounting areas; and

(b) from the date of transmission,—

(i) the transferor ceases to be a participant under this Act in relation to the post-1989 forest land to which the transmitted interest relates and the transferee becomes a participant in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1) in relation to the post-1989 forest land to which the transmitted interest relates; and

(ii) the area of post-1989 forest land to which the transmitted interest relates constitutes a new carbon accounting area in respect of which the transferee is the participant; and

(iii) any post-1989 forest land remaining in an affected carbon accounting area and to which the transmitted interest does not relate constitutes a new carbon accounting area in respect of which the transferor is the participant.

(4) If this section applies because a transmitted interest has been transmitted by operation of law, then—

(a) the notice given under subsection (3)(a)(i) must be given as soon as practicable after the date of transmission; and

(b) the emissions return required under section 193 must be submitted as soon as possible after the date of the transmission.

(5) A notice given under subsection (3)(a)(i) must be—

(a) in the prescribed form; and

(b) accompanied by any prescribed fees or charges and any prescribed information; and

(c) signed by both the transferor and the transferee.

(6) Following receipt of a notice complying with subsection (5) and the emissions return required under section 193, the EPA must take such of the following actions as are relevant:

(a) if the transferee is not already registered under section 57, enter the transferee's name on the register kept under section 57 as a participant in respect of an activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1):

(b) if the transferee is already registered under section 57, but not in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the

fourth column of the table in subsection (1), amend that registration to show that the transferee is now a participant in respect of that activity:

(c) if the transferor is registered under section 57 only in respect of carrying out the activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land to which the transmitted interest relates, remove the transferor's name from the register in respect of that activity:

(d) update the EPA's records under section 188(2) by—

(i) removing the affected carbon accounting areas from the transferor's record (if the transferor remains a participant only in respect of an activity listed in Part 1 of Schedule 4); and

(ii) recording any new carbon accounting areas constituted by operation of subsection (3)(b)(ii) or (iii) on the transferor's or transferee's record; and

(iii) recording the opening unit balance of any carbon accounting area referred to in subparagraph (ii), calculated in accordance with section 190(3)(a) or (c):

(e) as applicable, give notice to the transferor and transferee of the action taken by the EPA under paragraphs (a) to (d).

(7) To avoid doubt,—

(a) for the purposes of section 54(4), a transferor continues to be liable in respect of any obligations that arose in relation to the carbon accounting area or part of the carbon accounting area while the transferor was a participant in respect of the post-1989 forest land to which the transmitted interest relates (for example, in respect of the submitting of returns and surrendering of units required under section 189); and

(b) a transferor is not required to notify the EPA separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity; and

(c) the EPA is not required to notify any person under section 188(6)(a) of the registration of the transferee under section 57 if that registration is in accordance with this section.

Section 192: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 192(3)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(6)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(6)(e): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(7)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 193 Emissions returns in relation to transmitted interests

(1) If section 192 applies, the transferor is not required to submit an emissions return under section 191 in respect of any post-1989 forest land to which the transmitted interest relates, but must submit an emissions return under this section by the date specified in section 192(3)(a) or 192(4)(b), as applicable.

(2) An emissions return under this section must—

(a) be in respect of all affected carbon accounting areas; and

(b) in respect of each carbon accounting area covered by the return, be for the period—

(i) commencing on the latest of—

(A) the first day of the mandatory emissions return period (as specified in section 189(9)) in which the interest was transmitted; or

(B) the date on which the land in the affected carbon accounting area became post-1989 forest land; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(D) if an emissions return has been submitted under section 189(4A) in relation to the affected carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and

(ii) ending on the date of transmission; and

(c) comply with section 189(5) and (6), as if the references in those provisions to subsection (4) were references to this section.

(3) If a person submits an emissions return under this section,—

(a) section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section; and

(b) section 189(8) applies to the person as if the reference in that provision to "this section" was a reference to section 193.

Section 193: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 194 Information about status of forest land

(1) Despite anything in this Act, the EPA 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 since the carbon accounting area or areas were constituted, and the period covered by those returns; and

(b) the unit balance of the carbon accounting area or areas covered by the information request.

(c) *[Repealed]*

(3) *[Repealed]*

Section 194: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 194(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 194(2)(a): amended, on 8 December 2009, by section 67(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(2)(b): substituted, on 8 December 2009, by section 67(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(2)(c): repealed, on 8 December 2009, by section 67(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(3): repealed, on 8 December 2009, by section 67(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## *Post-1989 forest land and pre-1990 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 195 Notification of status of forest land

(1) The EPA must, if required by regulations made under section 168, notify the following persons of the details of the land that the EPA is satisfied is pre-1990 forest land, pre-1990 offsetting forest land, or post-1989 forest land in respect of which a person has registered as a participant under section 57, or that the EPA has declared to be exempt land:

(a) the Registrar of the Maori Land Court in whose jurisdiction the land is situated in relation to Maori land; and

(b) the Registrar-General of Land in relation to land registered under the Land Transfer Act 2017; and

(c) the Registrar of Deeds in relation to land that is registered under the Deeds Registration Act 1908.

(2) On receipt of a notice under subsection (1), the Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must record the notice on the appropriate register under the Land Transfer Act 2017, record of the Maori Land Court, or deeds index under the Deeds Registration Act 1908.

(3) The Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must cancel any notices recorded under subsection (2) if required under regulations made under section 168.

Section 195: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 195(1): amended, on 1 January 2013, by section 88 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 195(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 195(1)(b): replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 195(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

### *Transitional provisions*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 196 First emissions return for pre-1990 forest land activities

(1) Despite anything in this Act, a participant who carries out an activity listed in Part 1 of Schedule 3 in the period commencing on 1 January 2008 and ending on 31 December 2009—

(a) is not required to submit an annual emissions return under section 65 in relation to the year ending 31 December 2008; but

(b) must submit an emissions return in respect of the period commencing on 1 January 2008 and ending on 31 December 2009.

(2) Section 65(2) and (3) apply to the return submitted under subsection (1)(b) with all necessary modifications, as if each reference to a year were a reference to the period commencing on 1 January 2008 and ending on 31 December 2009.

(2A) A participant referred to in subsection (1) must, by 31 May 2011 but not before 1 January 2011, surrender the number of units listed in the participant's assess-

ment in the emissions return submitted under subsection (1)(b) in relation to the activity.

(3) For all other purposes of this Act, the emissions return submitted under subsection (1)(b) is to be treated as an annual emissions return required to be submitted under section 65.

(4) Despite anything in this Act, a participant who carries out an activity listed in Part 1 of Schedule 3 may not submit an emissions return before 1 January 2010.

(5) Despite anything in section 56, if an activity listed in Part 1 of Schedule 3 is carried out in 2008 or 2009, the person who carried out the activity has until 31 January 2010 to give notice to the EPA under section 56(1).

(6) To avoid doubt, a person who carried out an activity listed in Part 1 of Schedule 3 on or after 1 January 2008, but before this section came into force, must register as a participant under section 56(1) in accordance with subsection (5).

(7) Despite section 129(1)(b)(i), a person who carried out, before the commencement of this subsection, an activity listed in Part 1 of Schedule 3 for the period commencing with 1 January 2008 and ending with the close of 31 December 2009 is not liable under section 129(1)(b)(i) if the person notifies the EPA of that activity on or before 31 January 2010.

Section 196: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 196(1): amended, on 1 July 2009, by section 6(1) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(2): amended, on 1 July 2009, by section 6(2) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(2A): inserted, on 1 July 2009, by section 6(3) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(2A): amended, on 8 December 2009, by section 68 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 196(3): amended, on 1 July 2009, by section 6(4) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 196(5): amended, on 1 July 2009, by section 6(5) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(7): added, on 1 July 2009, by section 6(6) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 196(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 196A Power to withdraw or suspend certain draft allocation plans

*[Repealed]*

Section 196A: repealed, on 8 December 2009, by section 69 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 197 First emissions return for post-1989 forest land activities

Despite anything in this Act, the first emissions return submitted by a person to whom section 189 applies in respect of an activity listed in Part 1 of Schedule 4 may not be submitted before 1 January 2009.

Section 197: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 2—Liquid fossil fuels sector

Subpart 2: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 198 Registration as participant by purchasers of obligation fuel

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 3 of Schedule 4 may be submitted to the EPA at any time.

(2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 3 of Schedule 4,—

(a) the EPA must notify, under section 57(6)(b), every person who is registered under section 56 in respect of an activity in Part 2 of Schedule 3; and

(b) the registration takes effect 12 months from the date of the notice issued under section 57(6).

(3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 3 of Schedule 4, the EPA must—

(a) notify, under section 58(3)(c), every person who is registered under section 56 in respect of an activity listed in Part 2 of Schedule 3; and

(b) remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the notice issued under section 58(3)(b) and (c).

Section 198: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 198 heading: amended, on 1 July 2013, by section 89 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 198(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 198(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 198(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 198(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 199 Historical information sufficient to satisfy EPA

(1) A person who carries out an activity listed in Part 3 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of obligation fuel purchased by the person in the year prior to the year in which the person submits the application (and any other prior years the person wishes).

(2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4), satisfy itself that the person is, or will be when the person's registration takes effect, carrying out the activity listed in Part 3 of Schedule 4 on the basis of that information.

(3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy him or herself that the person is, (or will, when the person's registration takes effect, be) carrying out the activity listed in Part 3 of Schedule 4.

Section 199: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 199 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 199(1): amended, on 1 July 2013, by section 90(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 199(2): amended, on 1 July 2013, by section 90(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 199(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 199(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 200 Effect of purchasing less than threshold level of obligation fuel

If a person is a participant in respect of the activity listed in Part 3 of Schedule 4, and in any year the volume of obligation fuel that the person purchases is less than, or the person knows that the volume purchased will be less than, the threshold specified in Part 3 of Schedule 4—

(a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and

(b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and

(c) the person remains a participant in respect of the activity until the person's name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

Section 200: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 200 heading: amended, on 1 July 2013, by section 91(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 200: amended, on 1 July 2013, by section 91(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 200(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 200(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 201 Effect of registration by purchasers of obligation fuel

A participant in respect of an activity listed in Part 2 of Schedule 3 is not required to surrender units in respect of obligation fuel that is purchased by a person who is a participant in respect of an activity listed in Part 3 of Schedule 4.

Section 201: substituted, on 8 December 2009, by section 70 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 201 heading: amended, on 1 July 2013, by section 92(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 201: amended, on 1 July 2013, by section 92(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 202 Activities added to Part 2 of Schedule 3

(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, amend Part 2 of Schedule 3 by adding activities relating to the following matters:

(a) owning or operating a ship onto which goods are loaded at any port in New Zealand for carriage to and unloading at any other port in New Zealand, if the ship consumes fuel that is purchased—

(i) outside New Zealand; or

(ii) in New Zealand, but in respect of which no participant is required to surrender units under this Act; or

(b) fishing within New Zealand's exclusive economic zone, if the vessel used for fishing consumes fuel that is purchased outside New Zealand.

(2) The Minister may only recommend that an Order in Council be made under subsection (1) if—

(a) no participant is, prior to making the recommendation, liable to surrender units in respect of the emissions from the fuel consumed while the activity that is to be the subject of the recommendation is carried out; and

(b) adding the activity is—

(i) necessary to ensure that A is similar to B, where—

(A) A is the cost increases that a person carrying out the activity will face, if the activity is added, due to the obligation imposed by this Act on the person to surrender units in respect of the emissions from the fuel consumed while carrying out the activity; and

(B) B is the cost increases that a person carrying out a comparable activity faces due to any obligations imposed by this Act on persons carrying out an activity listed in Part 2 of Schedule 3 to surrender units in respect of the emissions from the fuel consumed while the comparable activity is carried out; and

(ii) not inconsistent with New Zealand's international obligations; and

(c) recommending the order will not result in costs to the Crown that exceed the benefits that the Crown expects to receive after the order is made.

(3) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—

(a) 1 January of the next year, if made on or before 30 June in any year; or

(b) 1 July of the next year, if made on or after 1 July in any year.

Section 202: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 202(3): replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### 202A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 202(1) must indicate that—

(a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and

(b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and

(c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 202A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### 203 Treatment of obligation fuels

(1) This section applies if, in breach of the Customs and Excise Act 2018, a participant fails to remove obligation fuel for home consumption.

(2) If this section applies, the obligation fuel that was not removed for home consumption must, for the purposes of this Act, be treated as obligation fuel removed for home consumption under the Customs and Excise Act 2018.

Section 203: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 203(1): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 203(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

## Subpart 3—Stationary energy sector

Subpart 3: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 204 Participant with respect to mining coal or natural gas

(1) This section applies if the following activities listed in Part 3 of Schedule 3 are carried out—

(a) mining coal where the volume of coal mined exceeds 2 000 tonnes in a year:

(b) mining natural gas, other than for export.

(2) If this section applies and—

(a) a permit is required under the Crown Minerals Act 1991 to carry out the mining, then the person who holds the permit is to be treated as the person carrying out the activity; or

(b) no permit is required to carry out the mining, then the owner of the mine is to be treated as the person carrying out the activity.

(3) Despite subsection (2)(a), subsection (4) applies if—

(a) a permit relating to mining coal is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the coal mined under the permit; or

(b) a permit relating to mining natural gas is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the gas mined under the permit.

(4) If this subsection applies,—

(a) section 157 does not apply; and

(b) each of the individual holders referred to in subsection (3)—

(i) is to be treated as the person carrying out the activity referred to in subsection (1) in relation to any natural gas or coal (as applicable) to which the person is entitled under the permit; and

(ii) must comply with the obligations of a participant under this Act in relation to the natural gas or coal (as applicable) to which the person is entitled under the permit.

Section 204: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 204(2)(a): amended, on 1 January 2013, by section 93 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 204(3): added, on 8 December 2009, by section 71 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 204(4): added, on 8 December 2009, by section 71 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 205 Mining natural gas in exclusive economic zone and continental shelf

(1) This Act applies to the activity of mining natural gas, other than for export, listed in Part 3 of Schedule 3, if that activity is carried out anywhere within the territorial limits of New Zealand, the exclusive economic zone, or in, on, or above the continental shelf.

(1A) To avoid doubt, a person who carries out the activity of mining natural gas, other than for export, anywhere within the territorial limits of New Zealand, the exclusive economic zone, or in, on, or above the continental shelf is not to be treated as importing the natural gas mined from that activity for the purposes of this Act.

(2) For the purposes of this section,—

**continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964

**exclusive economic zone** has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

Section 205: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 205(1A): inserted, on 8 December 2009, by section 72 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 206 Obligation with respect to combusting used oil, waste oil, and waste

A participant who carries out the activity of combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat listed in Part 3 of Schedule 3 is not required to surrender units in respect of any—

(a) emissions that result from the combustion of used oil or waste oil if the used oil or waste oil combusted is an obligation fuel; or

(b) carbon dioxide that results from the combustion of waste that is organic waste.

Section 206: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 207 Obligation with respect to mining coal

A participant who carries out the activity of mining coal, where the volume of coal mined exceeds 2 000 tonnes in a year, listed in Part 3 of Schedule 3—

(a) is not required to surrender units in respect of any carbon dioxide emissions from any coal that is exported:

(b) is required to surrender units in respect of any coal seam gas emissions that result from the activity.

Section 207: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 208 Purchase of coal or natural gas from certain related companies of Part 3 of Schedule 3 participant

(1) For the purposes of the activities listed in Part 4 of Schedule 4, the reference to a participant who mines coal or natural gas includes the following persons:

(a) a wholly owned subsidiary of a participant who mines coal or natural gas:

(b) a holding company of which a participant who mines coal or natural gas is a wholly owned subsidiary:

(c) another wholly owned subsidiary of a holding company of which a participant who mines coal or natural gas is the wholly owned subsidiary.

(2) In subsection (1), **subsidiary** and **holding company** have the same meaning as in section 5 of the Companies Act 1993.

Section 208: substituted, on 8 December 2009, by section 73 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 209 Registration as participant by purchasers of coal or natural gas

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 4 of Schedule 4 may be submitted to the EPA at any time.

(2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 4 of Schedule 4,—

(a) the EPA must notify, under section 57(6)(b), every person who—

(i) mines—

(A) coal, if the activity specified in the application is purchasing coal; or

(B) natural gas, if the activity specified in the application is purchasing natural gas; and

(ii) is registered under section 56; and

(b) the registration takes effect 12 months from the date of the notice issued under section 57(6).

(3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 4 of Schedule 4, the EPA must—

(a) notify, under section 58(3)(c), every person who—

(i) mines—

(A) coal, if the activity specified in the application is purchasing coal; or

(B) natural gas, if the activity specified in the application is purchasing natural gas; and

(ii) is registered under section 56; and

(b) remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the date of the notice issued under section 58(3)(b) and (c).

(4) Despite anything in subsection (2)(b), if the EPA receives an application submitted under subsection (1) by 31 January 2009, registration of the applicant as a participant may take effect from 1 January 2010 if—

(a) the applicant requests in the application that registration take effect from 1 January 2010; and

(b) the EPA has provided notification under section 57(6) by 31 March 2009 (which notice must specify 1 January 2010 as the date from which registration takes effect).

Section 209: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 209(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(4)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 210 Historical information sufficient to satisfy EPA

(1) A person who carries out an activity listed in Part 4 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of coal or natural gas, as the case may be, purchased by the person in the year prior to the year in which the person submits the application (and any other prior years the person wishes).

(2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4), satisfy itself that the person is (or will, when the person's registration takes

effect, be) carrying out an activity listed in Part 4 of Schedule 4 that is specified in the application on the basis of that information.

(3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy itself that the person is, or will be when the person's registration takes effect, carrying out the activity listed in Part 4 of Schedule 4 that is specified in the application.

Section 210: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 210 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 210(2): amended, on 1 January 2013, by section 94(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 210(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 210(3): amended, on 1 January 2013, by section 94(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 210(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 211 Effect of purchasing less than threshold level of coal or natural gas

If a person is a participant in respect of an activity listed in Part 4 of Schedule 4, and in any year the volume of coal or natural gas that the person purchases is less than, or the person knows that the volume purchased will be less than, the thresholds specified in Part 4 of Schedule 4,—

(a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and

(b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and

(c) the person remains a participant in respect of the activity until the person's name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

Section 211: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 211(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 211(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 212 Effect of registration by purchasers of coal or natural gas

A participant who mines coal or mines natural gas is not required to surrender units in respect of coal or natural gas that is purchased by a person who is a participant in respect of an activity listed in Part 4 of Schedule 4.

Section 212: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 212: amended, on 8 December 2009, by section 74 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Subpart 4—Agriculture

Subpart 4: substituted, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 213 Participant in respect of subpart 4 of Part 5 of Schedule 3

(1) If an activity listed in subpart 4 of Part 5 of Schedule 3 is carried out, the landowner of the land on which it is carried out is to be treated as the person carrying out the activity unless the EPA is satisfied that there is a written agreement in place between the landowner and a third party that—

(a) allows access by the third party to the land on which the activity listed in subpart 4 of Part 5 of Schedule 3 is being carried out and the third party is carrying out the activity listed in subpart 4 of Part 5 of Schedule 3 on the land; and

(b) was entered into—

(i) on or after the date appointed in the Order in Council under section 2A(9) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and is for a term of at least 3 years; or

(ii) before the date appointed in the Order in Council under section 2A(9) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and had at least 3 years until expiry at the date appointed in the Order in Council.

(2) If the EPA is satisfied that the criteria specified in subsection (1)(a) and (b) are met, the third party is to be treated as the person carrying out the activity.

(3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances specified in subsection (2), a third party, is to be treated as carrying out an activity listed in subpart 4 of Part 5 of Schedule 3.

Section 213: substituted, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 213(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 213(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 214 Units not required to be surrendered for fertilisers embedded in products

A participant who carries out the activity listed in subpart 1 of Part 5 of Schedule 3 of importing or manufacturing synthetic fertilisers containing nitrogen is not required to surrender units in respect of any synthetic fertiliser containing nitrogen that—

(a) is permanently embedded in a product as part of a manufacturing process; and

(b) does not result in any emissions.

Section 214: substituted, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 215 Effect of purchasing or farming less than threshold level

*[Repealed]*

Section 215: repealed, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 216 Effect of registration by farmers

*[Repealed]*

Section 216: repealed, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Subpart 5—Transitional provisions

Subpart 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 217 Transitional provision for penalties

(1) This section applies to a participant who submits an annual emissions return in respect of an activity listed in—

(a) Part 1 of Schedule 3 that relates to the period 1 January 2008 to 31 December 2009; or

(b) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 or Part 3 or 4 of Schedule 4 that relates to the period 1 January 2010 to 31 December 2010; or

(c) subpart 2 of Part 4 or Part 6 of Schedule 3 that relates to the period 1 January 2013 to 31 December 2013; or

(d) subpart 1 or 3 of Part 5 of Schedule 3 that relates to the period—

(i) beginning on the date that surrender obligations for agriculture start; and

(ii) ending on the close of 31 December of the year in which surrender obligations for agriculture started; or

(e) subpart 2 or 4 of Part 5 of Schedule 3 that relates to the first year in respect of which the participant is required to surrender units for emissions from the activity.

(2) Despite anything in this Act,—

(a) a participant to whom subsection (1)(a) applies is not liable under section 129(1)(a) for a failure to comply with section 62 in relation to the period before—

(i) section 62 comes into force; and

(ii) any regulations setting out the data or other prescribed information to be collected in relation to an activity listed in Part 1 of Schedule 3 come into force:

(b) if the emissions return of a participant to whom subsection (1) applies is amended by the EPA under section 120, the participant—

(i) is liable to surrender any units or additional units required to be surrendered under section 123(3); but

(ii) is not liable to pay an excess emissions penalty under section 134(2)(b)(ii) or 134A(2)(b) in relation to those units:

(c) if a participant to whom subsection (1) applies fails to surrender units or additional units as required under section 123(3), section 159(1)(a) applies as if the date of the notice given under section 123(3) were the date of the penalty notice given under section 134, 134A, or 136.

Section 217: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 217(1): substituted, on 8 December 2009, by section 76 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 217(1)(d): replaced, on 1 January 2013, by section 95(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 217(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 217(2)(b)(ii): amended, on 1 January 2013, by section 95(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 217(2)(c): amended, on 1 January 2013, by section 95(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 218 Transitional provision for voluntary reporting

(1) This section applies to—

(a) a person who carries out an activity listed in—

(i) Part 2 of Schedule 3 in the period 1 January 2009 to 31 December 2009:

(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period 1 January 2011 to 31 December 2011:

(iii) subpart 2 of Part 4 of Schedule 3 or Part 6 of Schedule 3 in the period 1 January 2011 to 31 December 2011:

(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year commencing on a date appointed by Order in Council made under section 2A(8) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or

(b) a person who is a participant in relation to an activity listed in—

(i) Part 3 of Schedule 4 in the period 1 January 2009 to 31 December 2009:

(ii) subpart 3 of Part 2 of Schedule 4 in the period 1 January 2011 to 31 December 2011.

(iii) *[Repealed]*

(2) Despite anything in this Act, a person to whom this section applies—

(a) may (but is not required to), if the person carries out an activity in subsection (1)(a)(i) to (iii) during the relevant period, notify the EPA under section 56 that the person is a participant in respect of the activity:

(ab) must, if the person carries out an activity specified in subsection (1)(a)(iv) during the relevant period, notify the EPA under section 56 that the person is a participant in respect of the activity:

(b) may (but is not required to), if the person has notified the EPA that the person carries out an activity in subsection (1)(a), or is a person to whom subsection (1)(b) applies, submit an annual emissions return under section 65 or an emissions return under section 66 or 118 in respect of the activity and the period in subsection (1):

(c) may not surrender units in relation to any emissions, and is not entitled to New Zealand units in relation to any removals, in respect of the relevant activity and period in subsection (1):

(d) is not required to comply, except as provided in paragraph (ab), with any of the obligations of a participant under this Act in respect of the relevant activity and period in subsection (1):

(e) is not liable under the offence provisions in sections 129 to 133 for any acts or omissions in relation to the relevant activity and period in subsection (1).

(3) The EPA must not include information obtained from an emissions return submitted in accordance with subsection (2)(b) in the information published under section 89.

Section 218: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 218(1)(a)(ii): amended, on 8 December 2009, by section 77(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(1)(a)(iii): amended, on 8 December 2009, by section 77(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(1)(a)(iv): added, on 8 December 2009, by section 77(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(1)(b)(iii): repealed, on 8 December 2009, by section 77(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 218(2)(a): amended, on 8 December 2009, by section 77(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(2)(ab): inserted, on 8 December 2009, by section 77(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(2)(ab): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 218(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 218(2)(d): substituted, on 8 December 2009, by section 77(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 218(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 219 Transitional provision for mandatory reporting by certain participants

(1) This section applies to—

(a) a person who carries out an activity listed in—

(i) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 in the period 1 January 2010 to 30 June 2010:

(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period—

(A) beginning on 1 January 2012; and

(B) ending on the date that surrender obligations for agriculture start:

(iii) subpart 2 of Part 4 of Schedule 3 or Part 6 of Schedule 3 in the period 1 January 2012 to 31 December 2012:

(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year following the year commencing on a date appointed by Order in Council made under section 2A(8) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or

(b) a person who is a participant in relation to an activity listed in Part 3 or 4 of Schedule 4 in the period 1 January 2010 to 30 June 2010.

(2) Despite anything in this Act, a person to whom this section applies may not surrender units—

(a) under section 65(4) in relation to any emissions reported in the person's annual emissions return for the relevant period referred to in subsection (1); or

(b) under section 118(5) in relation to any emissions reported in an emissions return submitted under section 118 that relates to the relevant period referred to in subsection (1).

(3) In addition to the requirements specified in section 65, a person to whom subsection (1)(a)(i) or (b) applies must record in that person's annual emissions return for the period 1 January 2010 to 31 December 2010 the emissions from the activity listed in Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 or Part 3

or 4 of Schedule 4, calculated under section 62(b) and, if required, verified under section 62(c), for the period 1 July 2010 to 31 December 2010.

(4) For the purposes of calculating emissions for the period 1 July 2010 to 31 December 2010 under subsection (3)—

(a) references to a year in the Climate Change (Liquid Fossil Fuels) Regulations 2008 and the Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 must be treated as references to the period 1 July 2010 to 31 December 2010; and

(b) the provisions of the regulations specified in paragraph (a) apply to emissions described in subsection (3) with any necessary modifications.

(5) Subsections (3) and (4) apply with any necessary modifications to a return that covers any part of the period 1 January 2010 to 31 December 2010 that is submitted under section 118 by a person to whom subsection (1)(a)(i) or (b) applies.

Section 219: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 219(1)(a)(i): substituted, on 8 December 2009, by section 78(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(1)(a)(ii): replaced, on 1 January 2013, by section 96 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 219(1)(a)(iii): amended, on 8 December 2009, by section 78(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(1)(a)(iii): amended, on 8 December 2009, by section 78(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(1)(a)(iv): added, on 8 December 2009, by section 78(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(1)(b): substituted, on 8 December 2009, by section 78(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(3): added, on 8 December 2009, by section 78(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(4): added, on 8 December 2009, by section 78(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 219(5): added, on 8 December 2009, by section 78(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 220 Transitional provision relating to unit entitlements for subpart 1 or 3 of Part 2 of Schedule 4 participants

Despite anything in this Act,—

(a) a person who is a participant in respect of an activity listed in subpart 1 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2010 to 31 December 2010, or any other emissions return that relates to dates within the period 1 January 2010 to 30 June 2010, is not entitled to be transferred units under section 64 in relation to

any removals from the activity reported in any return in respect of the period 1 January 2010 to 30 June 2010; and

(b) a person who is a participant in relation to an activity listed in subpart 3 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2012 to 31 December 2012, or any other emissions return that relates to dates within that period, is not entitled to be transferred units under section 64 in relation to any removals from the activity reported in that return; and

(c) in addition to satisfying the requirements in section 65, a person to whom paragraph (a) applies must record removals calculated under section 62(b) and, if required, verified under section 62(c), for the period—

(i) 1 July 2010 to 31 December 2010, in the person's annual emissions return for the period 1 January 2010 to 31 December 2010; and

(ii) 1 July 2010 to 31 December 2010, in any emissions return submitted under section 66 that covers the dates within that period; and

(iii) 1 July 2010 to 30 September 2010, in any emissions return submitted under section 66 that covers dates within that period.

Section 220: substituted, on 8 December 2009, by section 79 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 221 Additional transitional provisions for Part 3 of Schedule 4 participants

(1) A person who purchases more than 10 million litres per year of obligation jet fuel from 1 or more persons who are likely to become participants in respect of an activity listed in Part 2 of Schedule 3 from 1 January 2010 is, during the period from the date of commencement of this section until 31 December 2009, to be treated for the purposes of this Act as a person carrying out an activity listed in Part 3 of Schedule 4.

(2) Despite section 198(2)(b), the registration of a person who registers as a participant in respect of an activity listed in Part 3 of Schedule 4—

(a) before 1 January 2010, takes effect on 1 July 2010; and

(b) on or after 1 January 2010 and before 1 July 2010, takes effect on the date that is 5 months after the date of entry of the person's name as a participant in the register under section 57.

(3) A person who is a participant in relation to an activity listed in Part 3 of Schedule 4 during the period from the date of commencement of this section until 31 December 2008 may not submit an annual emissions return or an emissions return under section 118 in respect of that activity for the period up to 31 December 2008.

(4) The provisions of this Act apply with any necessary modifications to an application to register as a participant by a person referred to in subsection (1) as if

the person or persons from whom the applicant purchases jet fuel were a participant carrying out an activity listed in Part 2 of Schedule 3.

Section 221: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 221(2): substituted, on 8 December 2009, by section 80 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 222 Transitional provisions regarding regulations that replace existing unit register regulations

Section 30H(1) and (3) do not apply to any regulations that—

(a) come into force in 2008; and

(b) replace the Climate Change (Unit Register) Regulations 2007.

Section 222: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 222A Transitional provision for liability to surrender units to cover emissions from activities relating to liquid fossil fuels, stationary energy, and industrial processes

*[Repealed]*

Section 222A: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222B Transitional provision for entitlement to receive New Zealand units for removal activities

*[Repealed]*

Section 222B: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222C Transitional provision permitting payment of money instead of surrender of units to cover emissions

*[Repealed]*

Section 222C: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222D Issuing New Zealand units to meet surrender obligation

*[Repealed]*

Section 222D: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222E Transitional provisions relating to reporting

*[Repealed]*

Section 222E: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222F Transitional provision for allocation to industry

*[Repealed]*

Section 222F: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222G Transitional provision regarding prohibition on ability to export New Zealand units

*[Repealed]*

Section 222G: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 222H Transitional provision for unincorporated bodies

(1) This section applies to 3 or more joint owners of land, leaseholders, forestry right holders, or parties to a Crown conservation contract who registered together as a participant (**joint participants**) in accordance with section 157 before the commencement of this section.

(2) If this section applies, then—

(a) the joint participants are, on and after the commencement of this section, to be treated as members of an unincorporated body that is a participant, but the unincorporated body is not required to—

(i) notify the EPA that it is a participant as specified in section 157(2)(c)(ii)(A); or

(ii) apply to be registered as a participant as specified in section 157(2)(c)(ii)(B); and

(b) the EPA must notify the joint participants that they are—

(i) now members of an unincorporated body for the purposes of this Act:

(ii) required to provide the details specified in section 157(2)(c)(ii)(C) and (2)(d) to the EPA within 20 working days of receiving the notice, unless the EPA has these details; and

(c) the EPA must, after receiving the information specified in paragraph (b)(ii), update any records relating to the joint participants, including (but not limited to) by removing the names of the joint participants from any register kept under this Act and substituting the name of the unincorporated body.

(3) Failure to provide the information specified in section 157(2)(d)(i) in response to a notice given under subsection (2)(b) must be treated as an offence under section 131(1)(a) and that section applies as if the reference to section 94 in that section were a reference to this section.

(4) If the joint participants fail to provide the information specified in a notice given under subsection (2)(b) within the specified period, the EPA may, as applicable,—

(a) choose a name for the unincorporated body and update any records relating to the joint participants as specified in subsection (2)(c); and

(b) nominate 1 of the members of the unincorporated body as the person to whom notices are to be given.

(5) If the EPA updates any records relating to joint participants in accordance with subsection (2)(c) or (4), the EPA must notify the person authorised or nominated to receive notices on behalf of the unincorporated body accordingly.

(6) Despite subsection (2),—

(a) until the EPA updates any records in relation to any joint participants, the joint participants together remain registered as a participant, and are jointly and severally liable for all obligations, and jointly and severally entitled to all benefits, arising from their status as a participant; and

(b) the joint participants whose names have been removed from a register and the unincorporated body whose name has been substituted on that register are to be treated for the purposes of this Act as the same participant.

Section 222H: inserted, on 8 December 2009, by section 81 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 222H(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(b)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

# Part 6
# Targets

Part 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Part 6 heading: replaced, on 1 January 2013, by section 98 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 223 Establishment of Household Fund

*[Repealed]*

Section 223: repealed, on 8 December 2009, by section 82 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 224 Gazetting of targets

(1) The Minister must set a target.

(2) The Minister responsible for the administration of the Act may set a target, or amend or revoke an existing target, at any time.

(2A) Before the Minister sets, amends, or revokes a target, the Minister must consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the target.

(3) As soon as practicable after setting, amending, or revoking a target under this section, the Minister must—

(a) publicly notify the target or revocation of the target in the *Gazette*; and

(b) make the target or revocation of the target publicly accessible via the Internet site of the department of the chief executive.

(4) To avoid doubt, a *Gazette* notice under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

(5) To avoid doubt, any number of targets may be set using the process under this section.

Section 224: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 224(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 224(2A): inserted, on 8 December 2009, by section 83 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 224(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 224(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### 225 Regulations relating to targets

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting a target.

(2) Before recommending the making of an Order in Council under subsection (1), the Minister must consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the order.

(3) The Minister—

(a) must review the target following publication of any Intergovernmental Panel on Climate Change Assessment Report or report of a successor agency; and

(b) may at any time recommend to the Governor-General the setting of a target, or amendment or revocation of a target, having regard to the following matters:

(i) any Intergovernmental Panel on Climate Change Assessment Report or report of a successor agency:

(ii) any other matters the Minister considers relevant.

(4) To avoid doubt, any number of targets may be set using the process under this section.

Section 225: added, on 8 December 2009, by section 84 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 225(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 225(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

# Part 7
# Synthetic greenhouse gas levy

Part 7: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 226 Overview of functions and responsibilities of EPA and agencies under this Part, Customs and Excise Act 2018, and Land Transport Act 1998

(1) This section is a guide to the functions and responsibilities of the EPA and the agencies in relation to the synthetic greenhouse gas levy, but it does not affect the interpretation or the application of the provisions of this Part, the Customs and Excise Act 2018, or the Land Transport Act 1998.

(2) Under this Part,—

(a) the functions of the EPA are to—

(i) receive and collate information from the agencies under section 241; and

(ii) publish information in accordance with section 250; and

(iii) monitor compliance with subpart 1; and

(b) the function of the Registrar of Motor Vehicles is to receive payment of the motor vehicle levy under section 228; and

(c) the function of the New Zealand Customs Service is to receive payment of the goods levy under section 229; and

(d) it is a function of the EPA and the agencies to recover unpaid levies under section 230.

(3) Under the Customs and Excise Act 2018, the function of the New Zealand Customs Service is to assess and collect the goods levy and, for this purpose,—

(a) assess and collect the levy on goods as if the levy were a duty; and

(b) recover unpaid levies as if they were unpaid duties.

(4) Under the Land Transport Act 1998, the function of the Registrar of Motor Vehicles is to assess and collect the motor vehicle levy.

Section 226: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 226 heading: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 226(1): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 226(3): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

## Subpart 1—Synthetic greenhouse gas levy

Subpart 1: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Levy imposed*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 227 Synthetic greenhouse gas levy imposed

(1) A levy is imposed on—

(a) a leviable motor vehicle that is registered on or after 1 July 2013, but is not imposed on a motor vehicle that was registered before 1 July 2013 and registered again on or after 1 July 2013; and

(b) an item of leviable goods that is imported into New Zealand on or after 1 July 2013.

(2) However, if a leviable motor vehicle is registered more than once on or after 1 July 2013, it is liable for the levy only once.

Section 227: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 228 Person who registers leviable motor vehicle responsible for paying levy

(1) The person who registers a leviable motor vehicle on or after 1 July 2013 is responsible for paying the levy.

(2) The levy (including any goods and services tax payable on it) must be paid to the Registrar of Motor Vehicles at the same time as the person pays for the registration of the vehicle.

Section 228: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 229 Importer of leviable goods must pay levy

(1) A person who imports leviable goods on or after 1 July 2013 must pay the levy at the prescribed rate for the goods.

(2) The person must pay the levy (including any goods and services tax payable on it) to the New Zealand Customs Service at the same time as duty under the Tariff Act 1988 or excise-equivalent duty would be paid on the goods if any were payable.

Section 229: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 230 Levies are debt due to the Crown

(1) A levy that becomes payable is a debt due to the Crown.

(2) The EPA may, on behalf of the Crown, recover the debt in a court of competent jurisdiction.

(3) This section does not limit—

(a) the power of the Customs to recover an unpaid amount of goods levy as a debt under the Customs and Excise Act 2018; or

(b) the power of the Registrar of Motor Vehicles to recover an unpaid amount of motor vehicle levy as a debt under the Land Transport Act 1998.

Section 230: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 230(3)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### 231 Penalties for failure to pay levy

*[Repealed]*

Section 231: repealed, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### 232 Application of provisions of Customs and Excise Act 2018

(1) The provisions of the Customs and Excise Act 2018 that apply to the collection of duties (including, without limitation, subpart 8 of Part 3 of that Act) apply, with all necessary modifications, to the collection of the goods levy under this Act as if the levy were a duty to which that Act applies.

(2) However,—

(a) section 138(2) of that Act applies as if the reference to dutiable goods were a reference to leviable goods:

(b) section 138(3) and (4) of that Act apply as if they did not refer to the owner of the goods or the licensee of a Customs controlled area.

(3) Despite subsection (1), the following provisions of the Customs and Excise Act 2018 do not apply to the collection of the levy:

(a) section 139:

(b) section 144:

(c) section 146:

(d) section 147:

(e) section 153.

Section 232: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 232 heading: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(1): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(2)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(2)(b): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(3): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### *Calculation of levy*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 233 Rate of synthetic greenhouse gas levy

(1) The levy rate that applies to a leviable motor vehicle, a class of leviable motor vehicle, or an item or a class of leviable goods in a levy year must be calculated in accordance with the following formula:

$$R = A \times B \times GWP$$

where—

A is the amount of synthetic greenhouse gas contained in the class of leviable motor vehicle or leviable goods, or the item of leviable goods

B is the price of carbon specified under subsection (4)(b)

GWP is the global warming potential specified in regulations for the specified synthetic greenhouse gas

R is the rate of the levy.

(2) In this section, **amount** means the weight or any other unit of measurement of a synthetic greenhouse gas prescribed for the purpose of this section in regulations made under section 246(1)(c) or (e).

(3) For the purpose of item A, the amount of synthetic greenhouse gas contained in a leviable motor vehicle or leviable good is—

(a) the amount specified by regulations for that class of leviable motor vehicle or leviable good, or for an item of leviable good; and

(b) if no amount is specified by regulations, the actual amount contained in the leviable motor vehicle or leviable good.

(4) For the purpose of item B, the Governor-General may, by Order in Council made on the recommendation of the Minister,—

(a) prescribe the methodology for specifying the price of carbon; and

(b) specify the price of carbon by applying the methodology.

(5) Regulations made under subsection (4)(a)—

(a) must be made in accordance with the process set out in section 247; and

(b) may not come into force earlier than 3 months after the date of their notification in the *Gazette*.

(6) Before making a recommendation under subsection (4), the Minister must take into account the following matters:

(a) the price of the units used to calculate revenue from the greenhouse gas emissions trading scheme in the Crown annual financial statements over the preceding 12 months; and

(b) the price of New Zealand units sold by auction under section 6A over the preceding 12 months; and

(c) any changes to the operation of the greenhouse gas emissions trading scheme that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year.

Section 233: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 234 Transitional provision for synthetic greenhouse gas levy

(1) Despite section 233(5), the requirements of that subsection do not apply to regulations made under section 233(4) that apply during the period 1 July 2013 to 31 December 2013 (the **transitional period**).

(2) However, the methodology prescribed by regulations made under section 233(4)(a) in the transitional period ceases to apply on and from the end of the transitional period.

Section 234: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 235 Temporary suspension of levy set by section 233

*[Repealed]*

Section 235: repealed, on 1 January 2019, by section 235(5).

### 236 Maximum price of carbon for purpose of levy calculation

(1) This section applies to the calculation of item B of the formula set out in section 233(1) for the period—

(a) beginning on the date on which this section comes into force; and

(b) ending on the close of the date specified for the purpose of this section as the closure date by the Governor-General by Order in Council made on the recommendation of the Minister.

(2) If, during the period specified in subsection (1), the application of the methodology prescribed under section 233(4)(a) results in a carbon price that is higher than $25, the regulations made under section 233(4)(b) must prescribe a carbon price of $25.

(3) Before the Minister may make a recommendation under subsection (1)(b), the Minister must be satisfied that a person does not meet his or her obligation to surrender, repay, or reimburse units by paying $25 for each unit in accordance with section 178A.

(4) This section overrides section 233.

Section 236: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 236(1): amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

Section 236(4): amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 237 Levy rate exclusive of GST

A levy rate calculated in accordance with section 233 is exclusive of goods and services tax.

Section 237: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 237: amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 238 Levy rate for period from 1 July 2013 to 31 December 2013

*[Repealed]*

Section 238: repealed, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 239 Levy rate to apply for single calendar year on and after 1 January 2014

(1) A levy rate applies for 1 levy year.

(2) *[Repealed]*

(3) If no rate is set before the beginning of a levy year, the levy rate for that year is the same as it was for the preceding levy year.

(4) However, if a levy rate is set for a levy year after the beginning of the levy year, the new levy rate applies from the beginning of the quarter of the levy year following the date on which the levy rate was set until the close of the levy year.

(5) For the purposes of this section and section 241,—

(a) a levy rate is set on the date on which the regulations prescribing the rate come into force:

(b) the quarters of a levy year are—

(i) 1 January to 31 March:

(ii) 1 April to 30 June:

(iii) 1 July to 30 September:

(iv) 1 October to 31 December.

Section 239: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 239(2): repealed, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### *Levies to be paid into Crown Bank Account*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 240 Agencies to pay levy into Crown Bank Account

The EPA and the agencies must pay the amount of all levies received under this Part into a Crown Bank Account.

Section 240: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Information*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 241 Agencies to provide information to EPA quarterly

(1) The agencies must, for each quarter of a levy year, keep records of and provide to the EPA all the following information:

(a) the amount of levy money received:

(b) the number of—

(i) leviable motor vehicles registered:

(ii) consignments of leviable goods imported:

(c) the number of persons who were required to pay the levy by section 228 or 229 (as applicable):

(d) the number of persons who failed to pay the levy as required by section 228 or 229 (as applicable):

(e) the amount of levy money refunded:

(f) the amount of levy money unable to be recovered.

(2) The information described in subsection (1) must be provided for each class of leviable motor vehicle or and for each class of leviable goods.

Section 241: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 242 Agencies and EPA to share information

Section 149(2) applies as if the EPA and the agencies were referred to in section 149(1).

Section 242: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 243 Circumstances where levy may be refunded

(1) Subsection (2) applies in relation to a levy paid under section 228 on—

(a) a motor vehicle containing a leviable good; or

(b) a motor vehicle containing a synthetic greenhouse gas that is, because it is imported after 1 July 2013, subject to the greenhouse gas emissions trading scheme under subpart 2 of Part 4 of Schedule 3.

(2) The EPA, upon application in an approved manner by the person responsible for the payment required under section 228, must refund the motor vehicle levy paid on the relevant motor vehicle, but only if the person applying for the refund establishes, to the satisfaction of the EPA, that—

(a) the motor vehicle levy has been paid in relation to the relevant motor vehicle; and

(b) the relevant motor vehicle is one to which subsection (1) applies.

Section 243: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 244 Exemptions from payment of synthetic greenhouse gas levy

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons from—

(a) paying the whole or part of the levy for certain leviable motor vehicles or leviable goods; or

(b) being subject to the whole or part of the levy for certain leviable motor vehicles or leviable goods; or

(c) a combination of the matters specified in paragraphs (a) and (b).

(2) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.

(3) Before recommending the making of an order under subsection (1), the Minister must be satisfied that—

(a) the order will not materially undermine the environmental integrity of the synthetic greenhouse gas levy; and

(b) the costs of making the order do not exceed the benefits of making the order.

(4) In determining whether to recommend the making of an order under subsection (1), the Minister must have regard to the following matters:

(a) the need to maintain the environmental integrity of the synthetic greenhouse gas levy; and

(b) the desirability of minimising any compliance and administrative costs associated with the synthetic greenhouse gas levy; and

(c) the relative costs of giving the exemption or not giving it, and who bears the costs; and

(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and

(e) any other matters the Minister considers relevant.

(5) While an order made under this section is in force, any person or class of persons in respect of whom the order is made is not required to comply with the obligation to pay the levy.

(6) Before recommending the making or revocation of an order under this section, the Minister must—

(a) consult with persons that the Minister considers are likely to be substantially affected by the making of the order; and

(b) give those persons the opportunity to make submissions; and

(c) consider those submissions.

Section 244: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

*Regulations*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 245 Regulations specifying levy rates

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing the rate of the levy to apply to 1 or more classes of leviable motor vehicles:

(b) prescribing the rate of the levy to apply to 1 or more items or classes of leviable goods.

(2) Regulations made under subsection (1)(a) may specify different rates for different classes of leviable motor vehicles.

(3) Regulations made under subsection (1)(b) may specify different rates for different classes of leviable goods.

(4) Regulations made under subsection (1) come into force on a date specified in the regulations that may not be earlier than 3 months after the date of their notification in the *Gazette*.

Section 245: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 246 Regulations relating to synthetic greenhouse gas levy

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

*Specified synthetic greenhouse gases*

(a) specifying a hydrofluorocarbon or perfluorocarbon as a specified synthetic greenhouse gas for the purposes of the levy:

*Leviable motor vehicles*

(b) specifying classes of leviable motor vehicles to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):

(c) specifying the amount of a specified synthetic greenhouse gas that each class of leviable motor vehicles is to be treated as containing:

*Leviable goods*

(d) specifying leviable goods or classes of leviable goods to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):

(e) specifying the amount of a specified synthetic greenhouse gas that an item or class of leviable goods is to be treated as containing:

*General*

(f) specifying accounts and records that must be kept by persons collecting levies, or persons who are or may be liable to pay a levy:

(g) specifying the information that persons collecting levies must provide to the EPA and when the information must be provided:

(h) prescribing the data or other information that must be collected under section 248(1)(a) in relation to a class of leviable goods or synthetic greenhouse gases, and, if relevant, the mechanism or method by which the data or information must be collected:

(i) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.

(2) Before making a recommendation for the making of regulations under subsection (1)(a), the Minister must have regard to New Zealand's international obligations relating to synthetic greenhouse gases.

(3) Regulations made under subsection (1)(a) to (e) come into force on a date specified in the regulations that may not be earlier than 3 months after the date of their notification in the *Gazette*.

Section 246: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 247 Process for making orders and regulations

(1) Before making a recommendation for the making of regulations under section 233(4)(a), 246(1)(a) to (e), or 258, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) providing a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) giving adequate and appropriate consideration to submissions.

(3) A failure to comply with this section does not affect the validity of regulations made under section 233(4)(a), 246(1)(a) to (e), or 258.

Section 247: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## *Obligations of importers of leviable goods*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 248 Collecting information and keeping records

(1) An importer must, in relation to the importation of leviable goods containing a specified synthetic gas,—

(a) collect the prescribed data or other prescribed information (which data or information must, if required by regulations, be verified by a person or an organisation recognised by the EPA for the purpose); and

(b) keep records of the data or information in the prescribed format (if any); and

(c) keep sufficient records to enable the EPA to verify, in relation to any levy year,—

(i) the quantity of leviable goods of each class imported; and

(ii) the total amount of levy paid on those goods.

(2) The records specified in subsection (1) must be kept for a period of at least 7 years after the end of the year to which they relate.

Section 248: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## Subpart 2—Administrative provisions and verification

Subpart 2: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 249 Application of section 88 (Directions to EPA)

Section 88 applies in relation to the EPA's exercise of powers and performance of functions under this Part or any regulations made under this Part as if a reference to Part 5 were a reference to Part 7.

Section 249: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 250 EPA to publish information relating to levies

(1) The EPA must publish the following information in relation to leviable goods imported and leviable motor vehicles registered in each reporting year in accordance with subsection (2):

- (a) for each class of leviable motor vehicle, the total number of persons who registered a vehicle of that class; and
- (b) for each specified synthetic greenhouse gas used in the air-conditioning system of a leviable motor vehicle, the total number of leviable motor vehicles registered; and
- (c) for each class of leviable goods, the total number of persons who imported leviable goods of that class; and
- (d) for each specified synthetic greenhouse gas treated as contained in a class of leviable goods, the total quantity of goods of that class imported; and
- (e) in respect of each class of leviable motor vehicle, the number of leviable motor vehicles registered; and
- (f) in respect of each class of leviable goods, the number of consignments imported; and
- (g) the total quantity of synthetic greenhouse gas treated as contained in the air-conditioning systems of leviable motor vehicles of each class registered; and
- (h) the total quantity of synthetic greenhouse gas treated as contained in leviable goods of each class imported; and
- (i) the total amount of levy money collected; and
- (j) the number of persons who failed to comply with their obligation to pay a levy.

(2) The EPA—

- (a) must publish the information specified in subsection (1) as soon as practicable after the end of the reporting year; and

(b) may publish the information specified in subsection (1), in whole or in part, at any other time and in whatever manner and format that the EPA considers appropriate.

(3) The EPA is not required to publish the information required under subsection (1)(b), (d), (g), and (h) in respect of an activity if the EPA is satisfied that publishing the information would result in the disclosure of the amount of synthetic greenhouse gas imported by an identifiable person or in motor vehicles registered by an identifiable person, unless—

(a) the person to whom the information relates has consented to the publication of the information; or

(b) the information is already in the public domain.

(4) In this section, **reporting year** means a 12-month period starting on 1 July and ending with the close of 30 June.

Section 250: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 251 Recognition of verifiers

(1) The EPA may, in accordance with regulations made under section 258, recognise a person or an organisation with the prescribed expertise, technical competence, or qualifications as a person or an organisation that may undertake verification functions for the purposes of section 248(1)(a).

(2) A person or an organisation may be recognised by the EPA as able to verify information in respect of 1 or more classes of leviable motor vehicles or leviable goods, or 1 or more items of leviable goods.

(3) The EPA may suspend or revoke any recognition given under this section in accordance with regulations made under section 258.

Section 251: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 252 Enforcement officers

The EPA may appoint 1 or more enforcement officers under section 93 to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under Part 4 in relation to this Part.

Section 252: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 253 Power to require information

(1) The EPA or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of ascertaining whether—

(a) a person is complying with this Part; or

(b) the EPA should exercise any powers under this Part.

(2) The EPA or an enforcement officer may require the person who is to provide the information to also provide a statutory declaration attesting to the truthfulness of the information provided.

(3) The information must be provided—

(a) in the form specified by the person who requested it; and

(b) within any reasonable time specified in the notice; and

(c) free of charge.

Section 253: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 254 Power to inquire

(1) This section applies for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any other information required for the purposes of the administration or enforcement of this Part.

(2) The EPA may, by notice, require a person to—

(a) appear before it or an enforcement officer at a time and place specified in the notice to give evidence; and

(b) produce a document or class of documents in the person's possession or under the person's control.

(3) The EPA or an enforcement officer may require the evidence to be given under oath, and either orally or in writing.

(4) For the purpose of subsection (3), the EPA or an enforcement officer may administer an oath.

(5) Sections 97 and 98 apply to an inquiry under this section.

Section 254: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 255 Inquiry before District Court Judge

(1) The EPA may apply in writing to a District Court Judge to hold an inquiry under this section, if the EPA considers it necessary for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any other information required for the purposes of the administration or enforcement of this Part.

(2) Section 96(2) to (4) apply in relation to an inquiry under this section as if there were no reference to the chief executive.

(3) Section 96(5) applies as if the reference to the chief executive were a reference to the EPA.

(4) Sections 97 and 98 apply to an inquiry under this section.

Section 255: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 256 Obligation to maintain confidentiality

(1) The EPA and every enforcement officer—

(a) must keep confidential all information that comes into their knowledge when performing any function or exercising any power under this Part; and

(b) may not disclose any information described in paragraph (a), except in the circumstances described in section 99(2)(b).

(2) However, to avoid doubt, the EPA may,—

(a) provide or publish general guidance in relation to the operation of this Part; and

(b) with the prior approval of the Minister, prepare statistical information and provide it to any person in a form that does not identify any individual.

Section 256: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 257 Power of entry for investigation, warrants, etc

(1) Sections 100 and 102 to 106 apply in relation to this Part as if every reference to Part 5 were a reference to Part 7.

(2) Section 101 applies as if every reference to section 129, 132, or 133 included a reference to sections 259, 261, and 263.

Section 257: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 258 Regulations relating to verifiers

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) prescribing the data or other information that must be verified by a person or an organisation recognised by the EPA under section 251; and

(b) prescribing, for the purposes of section 251,—

(i) the process by which a person or an organisation may be recognised as being able to verify information or calculations for the purposes of section 248; and

(ii) the expertise, technical competence, or qualifications required for recognition as a person or an organisation able to verify data or information; and

(iii) any additional—

(A) requirements for recognition of an organisation; and

(B) restrictions on the employees of the organisation who may carry out the duties of the organisation in respect of the recognition; and

(iv) the period for which a person or an organisation may be recognised, and the process for the renewal of recognition; and

(v) conditions of recognition, which may include ongoing competency and professional standard requirements, membership of a professional body, and the provision of reports to the EPA; and

(vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and

(vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising a person or an organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought.

(2) Regulations made under subsection (1) may apply—

(a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other specified things; or

(b) in respect of the same classes of activity, persons, parts of New Zealand, or other specified things, in different circumstances; or

(c) generally or at any specified time of each year.

(3) Before making a recommendation for the making of regulations under subsection (1)(a), the Minister must have regard to New Zealand's international obligations in respect of the collection of data and information relating to specified synthetic greenhouse gases.

Section 258: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## Subpart 3—Offences and penalties

Subpart 3: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Offences relating to synthetic greenhouse gas levy*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### 259 Offence in relation to failure to collect data and keep records

(1) A person who is an importer commits an offence against this Act if the person, without reasonable excuse, fails to comply with section 248(1) (requirement to collect data or other information and keep records).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) the first time the person is convicted of that offence, to a fine not exceeding $8,000:

(b) the second time the person is convicted of that offence, to a fine not exceeding $16,000:

(c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding $24,000.

Section 259: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 259(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 260 Failure to provide information or documents

(1) A person commits an offence against this Act if the person, without reasonable excuse,—

(a) fails to provide information to the EPA or an enforcement officer when required to do so under section 253; or

(b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 254.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $12,000:

(b) in the case of a body corporate, to a fine not exceeding $24,000.

Section 260: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 260(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 261 Other offences

(1) A person commits an offence against this Act if the person, without reasonable excuse,—

(a) refuses to take an oath when required to do so under section 254; or

(b) refuses to answer any question when required to do so under section 254; or

(c) knowingly fails to comply with section 248(1) (requirement to collect data or other information and keep records); or

(d) knowingly provides altered, false, incomplete, or misleading information to the EPA, an enforcement officer, or any other person in respect of any matter in this Part; or

(e) wilfully obstructs, hinders, resists, or deceives—

(i) the EPA or an enforcement officer exercising a power conferred on that person under this Part; or

(ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority in relation to a power conferred on that person under the Customs and Excise Act 2018 in relation to the goods levy; or

(iii) the Registrar of Motor Vehicles in relation to a power conferred on him or her under the Land Transport Act 1998 in relation to the motor vehicle levy.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $25,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 261: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 261(1)(e)(ii): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 261(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 262 Offence for breach of confidentiality

A person who knowingly contravenes section 256 commits an offence and is liable on conviction to either or both of—

(a) imprisonment for a term not exceeding 6 months:

(b) a fine not exceeding $15,000.

Section 262: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 262: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 263 Evasion

(1) A person commits an offence against this Act if the person, with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,—

(a) fails to comply with section 248(1) (requirement to collect data or other information and keep records); or

(b) fails to provide information to—

(i) the EPA, an enforcement officer, or any other person when required to do so under this Part; or

(ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority when required to do so under the Customs and Excise Act 2018 in relation to the goods levy; or

(iii) the Registrar of Motor Vehicles when required to do so under the Land Transport Act 1998 in relation to the motor vehicle levy; or

(c) provides altered, false, incomplete, or misleading information to the Minister or the EPA or any other person in respect of a matter in this Part.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction to either or both of—

(a) imprisonment for a term not exceeding 5 years:

(b) a fine not exceeding $50,000.

Section 263: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 263(1)(b)(ii): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 263(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

*Offence in relation to release of synthetic greenhouse gases*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 264 Offence in relation to release of synthetic greenhouse gases

(1) A person commits an offence against this Act if the person, in the course of undertaking an activity described in subsection (2), knowingly and without lawful justification or excuse releases any hydrofluorocarbon, perfluorocarbon, or sulphur hexafluoride into the atmosphere.

(2) The activities are installing, operating, servicing, modifying, dismantling, or disposing of any electrical switchgear, refrigeration or air-conditioning equipment, or other heat-transfer medium.

(3) A person who is convicted of an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $25,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 264: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 264(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 265 Defence for release of synthetic greenhouse gas

The circumstances in which a person described in section 264(1) may have a lawful justification or excuse for releasing any hydrofluorocarbon, perfluorocarbon, or sulphur hexafluoride into the atmosphere include (but are not limited to) circumstances where the release could not reasonably have been avoided.

Section 265: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

*Proceedings and liability*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 266 Limitation period for commencement of proceedings

Despite section 25 of the Criminal Procedure Act 2011, the limitation period for an offence against—

(a) section 260 or 261(1)(a), (b), or (e) ends on the date that is 2 years from the date on which the offence was committed:

(b) section 259 or 261(1)(c) or (d) ends on the date that is 7 years from the date on which the offence was committed.

Section 266: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 266: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 266(a): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 266(b): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### 267 Evidence in proceedings

(1) In any proceedings for an offence against this Part, a certificate or document (including an electronic copy) of any of the kinds described in subsection (2)—

(a) is admissible in evidence; and

(b) in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or the document, as the case may require.

(2) The kinds of certificate or document are—

(a) a certificate purporting to be signed by a delegate of the EPA to the effect that, at any specified date or during any specified period, a named person is or was, or is not or was not, an enforcement officer or a person or an organisation recognised under section 251; or

(b) a certificate purporting to be signed by any person authorised to delegate to any person, or to persons of any kind or description, the exercise of any power or the performance of any function under this Part, stating that the person has delegated—

(i) the exercise of the power or the performance of the function specified in the certificate to the person specified in the certificate; or

(ii) the exercise of the power or the performance of the function specified in the certificate to persons of a kind or description specified in the certificate, and that a named person specified in the certificate is a person of that kind or description.

(3) The production of a certificate or document purporting to be a certificate to which subsection (2) applies is prima facie evidence that it is such a certificate or document, without proof of—

(a) the signature of the person purporting to have signed the document; or

(b) the document's nature.

Section 267: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 268 Liability of body corporate, directors, managers of companies, companies, and persons for actions of directors, agents, and employees

(1) Sections 139 and 140 apply in relation to proceedings against, or conviction of, a body corporate for an offence under this Part as if a reference to Part 4 were a reference to Part 7.

(2) Section 141 applies as if a reference to sections 132(1)(c) to (f) or 133 included a reference to section 261(1)(c) or (d) or 263.

Section 268: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## Subpart 4—Other matters

Subpart 4: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 269 Review of operation and effectiveness of levy

(1) The Minister may, at any time, initiate a review of the operation and effectiveness of the synthetic greenhouse gas levy.

(2) A review may be undertaken by any method that the Minister considers appropriate.

(3) Without limiting the Minister's discretion under subsection (1), the Minister may appoint an independent panel—

(a) to conduct a review under subsection (1); and

(b) to report in accordance with the terms of reference.

(4) If the Minister appoints a panel, the Minister must—

(a) specify in writing the terms of reference for the review; and

(b) publish the report of the panel; and

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

(5) If the Minister initiates a review but does not appoint a panel, the Minister must—

(a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and

(b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and

(c) specify written terms of reference for the review; and

(d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.

(6) The Minister may, but need not, initiate a review under subsection (1) at the same time as he or she initiates a review under section 160 of the operation and effectiveness of the emissions trading scheme.

Section 269: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 270 Appointment and conduct of independent panel

(1) If the Minister appoints an independent panel under section 269, the Minister must—

(a) ensure that there is no fewer than 3 but not more than 7 members; and

(b) ensure that the majority of the members are not employees under the State Sector Act 1988; and

(c) consider whether the members have, in the Minister's opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—

(i) this Act; and

(ii) New Zealand's international obligations under the Protocol and the Convention and any other relevant international agreement; and

(iii) the operation of the synthetic greenhouse gas levy; and

(d) appoint 1 member as the chairperson of the panel.

(2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.

(3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.

(4) The review panel must—

(a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and

(b) after considering the Minister's response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.

(5) In conducting a review, the review panel—

(a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference of the review; and

(b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and

(c) may call for submissions.

(6) If the Minister initiates a review under section 269(1) and a review under section 160, the Minister may appoint 1 independent panel to undertake both reviews.

Section 270: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

# Schedule 1
# United Nations Framework Convention on Climate Change

s 4

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(*This table of contents is not part of the Convention*.)


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The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consump-

tion will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

## Article 1
## Definitions[1]

For the purposes of this Convention:

1. "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. "Climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. "Climate system" means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
4. "Emissions" means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
5. "Greenhouse gases" means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. "Regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. "Reservoir" means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. "Source" means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

[1] Titles of articles are included solely to assist the reader.

## Article 2
## Objective

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

## Article 3
## Principles

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

## Article 4
## Commitments

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

   (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

   (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

   (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

   (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

   (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

   (f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and

actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national[2] policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures

[2] This includes policies and measures adopted by regional economic integration organizations.

jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

(e) Each of these Parties shall:

(i) Coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and

(ii) Identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;

(g) Any Party not included in Annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementa-

tion by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

   (a) Small island countries;

   (b) Countries with low-lying coastal areas;

   (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;

   (d) Countries with areas prone to natural disasters;

   (e) Countries with areas liable to drought and desertification;

   (f) Countries with areas of high urban atmospheric pollution;

   (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;

   (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and

   (i) Land-locked and transit countries.

   Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

## Article 5
## Research and systematic observation

In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:

(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

## Article 6
## Education, training and public awareness

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

(a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

(i) The development and implementation of educational and public awareness programmes on climate change and its effects;

(ii) Public access to information on climate change and its effects;

(iii) Public participation in addressing climate change and its effects and developing adequate responses; and

(iv) Training of scientific, technical and managerial personnel.

(b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:

(i) The development and exchange of educational and public awareness material on climate change and its effects; and

(ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

## Article 7
## Conference of the parties

1. A Conference of the Parties is hereby established.

2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:

   (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

   (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

   (c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

   (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;

   (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

   (f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;

   (g) Make recommendations on any matters necessary for the implementation of the Convention;

   (h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;

   (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;

(j) Review reports submitted by its subsidiary bodies and provide guidance to them;

(k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;

(l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

## Article 8
## Secretariat

1. A secretariat is hereby established.

2. The functions of the secretariat shall be:

(a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;

(b) To compile and transmit reports submitted to it;

(c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference of the Parties;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

## Article 9
## Subsidiary body for scientific and technological advice

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:

(a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;

(b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways

and means of supporting endogenous capacity-building in developing countries; and

(e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

## Article 10
## Subsidiary body for implementation

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, this body shall:

(a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;

(b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2(d); and

(c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

## Article 11
## Financial mechanism

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.

2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

(a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;

(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

## Article 12
## Communication of information related to implementation

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:

(a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;

(b) A general description of steps taken or envisaged by the Party to implement the Convention; and

(c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:

(a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2(a) and 2(b); and

(b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2(a).

3. In addition, each developed country Party and each other developed Party included in Annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.

4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in Annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.

6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.

9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.

10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

## Article 13
## Resolution of questions regarding implementation

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

## Article 14
## Settlement of disputes

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

   (a) Submission of the dispute to the International Court of Justice, and/or

   (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

   A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.

8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

## Article 15
## Amendments to the Convention

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

6. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

## Article 16
## Adoption and amendment of annexes to the Convention

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2(b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3 and 4.
3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.
4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.
5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

## Article 17
## Protocols

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

## Article 18
## Right to vote

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

## Article 19
## Depositary

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

## Article 20
## Signature

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

## Article 21
## Interim arrangements

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.

2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.

3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility

should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

## Article 22
## Ratification, acceptance, approval or accession

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

## Article 23
## Entry into force

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

## Article 24
## Reservations

No reservations may be made to the Convention.

## Article 25
## Withdrawal

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

## Article 26
## Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have signed this Convention.

**DONE** at New York this ninth day of May one thousand nine hundred and ninety-two.

# Annex I

Australia
Austria
Belarus[a/]
Belgium
Bulgaria[a/]
Canada
Croatia[a/]*
Czech Republic[a/]*
Denmark
European Economic Community
Estonia[a/]
Finland
France
Germany
Greece
Hungary[a/]
Iceland
Ireland
Italy
Japan
Latvia[a/]
Liechenstein*
Lithuania[a/]
Luxembourg
Monaco*
Netherlands
New Zealand
Norway
Poland[a/]
Portugal
Romania[a/]
Russian Federation[a/]
Slovakia[a/]*

Slovenia[a/]*

Spain

Sweden

Switzerland

Turkey

Ukraine[a/]

United Kingdom of Great Britain and Northern Ireland

United States of America

[a/] Countries that are undergoing the process of transition to a market economy.

* Countries added to Annex I by an amendment that entered into force on 13 August 1998 pursuant to decision 4/CP.3 adopted at COP 3.

## Annex II

Australia
Austria
Belgium
Canada
Denmark
European Economic Community
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America

# Schedule 2
# Kyoto Protocol to the United Nations Framework Convention on Climate Change

s 4

*The Parties to this Protocol,*

*Being* Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",

*In pursuit* of the ultimate objective of the Convention as stated in its Article 2,

*Recalling* the provisions of the Convention,

*Being guided* by Article 3 of the Convention,

*Pursuant to* the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

## Article 1

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. "Conference of the Parties" means the Conference of the Parties to the Convention.
2. "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
3. "Intergovernmental Panel on Climate Change" means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.
4. "Montreal Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.
5. "Parties present and voting" means Parties present and casting an affirmative or negative vote.
6. "Party" means, unless the context otherwise indicates, a Party to this Protocol.
7. "Party included in Annex I" means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.

## Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2(e)(i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1(a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

## Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be

added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference

of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

## Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in

turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

## Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only

for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

## Article 6

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:
   (a) Any such project has the approval of the Parties involved;
   (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
   (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and
   (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.
3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.
4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that

any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

## Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.
3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

## Article 8

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as

part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:

   (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and

   (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

## Article 9

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those

required by Article 4, paragraph 2(d), and Article 7, paragraph 2(a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

## Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

  (i) Such programmes would, *inter alia*, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and

  (ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound

technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

## Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

   (a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

## Article 12

1. A clean development mechanism is hereby defined.
2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.
3. Under the clean development mechanism:
   (a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and
   (b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.
5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

(a) Voluntary participation approved by each Party involved;

(b) Real, measurable, and long-term benefits related to the mitigation of climate change; and

(c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

## Article 13

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its

effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2(d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) Make recommendations on any matters necessary for the implementation of this Protocol;

(g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;

(h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

## Article 14

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

## Article 15

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Conven-

tion shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

## Article 16

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

## Article 17

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

## Article 18

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences,

taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

## Article 19

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.

## Article 20

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

## Article 21

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

## Article 22

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

## Article 23

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

## Article 24

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

## Article 25

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
2. For the purposes of this Article, "the total carbon dioxide emissions for 1990 of the Parties included in Annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

## Article 26

No reservations may be made to this Protocol.

## Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

## Article 28

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**DONE** at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

# Annex A

**Greenhouse gases**

Carbon dioxide ($CO_2$)

Methane ($CH_4$)

Nitrous oxide ($N_2O$)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride ($SF_6$)

**Sectors/source categories**

Energy

- Fuel combustion
  - Energy industries
  - Manufacturing industries and construction
  - Transport
  - Other sectors
  - Other
- Fugitive emissions from fuels
  - Solid fuels
  - Oil and natural gas
  - Other

Industrial processes

- Mineral products
- Chemical industry
- Metal production
- Other production
- Production of halocarbons and sulphur hexafluoride
- Consumption of halocarbons and sulphur hexafluoride
- Other

Solvent and other product use

Agriculture

- Enteric fermentation
- Manure management
- Rice cultivation
- Agricultural soils

Prescribed burning of savannas

Field burning of agricultural residues

Other

Waste

Solid waste disposal on land

Wastewater handling

Waste incineration

Other

# Annex B

| Party | Quantified emission limitation or reduction commitment (percentage of base year or period) |
|---|---|
| Australia | 108 |
| Austria | 92 |
| Belgium | 92 |
| Bulgaria* | 92 |
| Canada | 94 |
| Croatia* | 95 |
| Czech Republic* | 92 |
| Denmark | 92 |
| Estonia* | 92 |
| European Community | 92 |
| Finland | 92 |
| France | 92 |
| Germany | 92 |
| Greece | 92 |
| Hungary* | 94 |
| Iceland | 110 |
| Ireland | 92 |
| Italy | 92 |
| Japan | 94 |
| Latvia* | 92 |
| Liechtenstein | 92 |
| Lithuania* | 92 |
| Luxembourg | 92 |
| Monaco | 92 |
| Netherlands | 92 |
| New Zealand | 100 |
| Norway | 101 |
| Poland* | 94 |
| Portugal | 92 |
| Romania* | 92 |
| Russian Federation* | 100 |
| Slovakia* | 92 |
| Slovenia* | 92 |
| Spain | 92 |

| Party | Quantified emission limitation or reduction commitment (percentage of base year or period) |
|---|---|
| Sweden | 92 |
| Switzerland | 92 |
| Ukraine* | 100 |
| United Kingdom of Great Britain and Northern Ireland | 92 |
| United States of America | 93 |

* Countries that are undergoing the process of transition to a market economy.

# Schedule 3
# Activities with respect to which persons must be participants

s 2A

Schedule 3: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Schedule 3 heading: amended, on 8 December 2009, by section 85(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Part 1
## Forestry

*(applies on and after 1 January 2008)*

Deforesting pre-1990 forest land other than forest land that under section 179A may not be treated as deforested, if the area deforested is more than 2 hectares in the 5-year period commencing on 1 January 2008, or in any subsequent 5-year period after that, but excluding any pre-1990 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

Schedule 3 Part 1: amended, on 1 January 2013, by section 101(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## Part 1A
## Pre-1990 offsetting forest land

*(applies on and after 1 January 2013)*

Schedule 3 Part 1A: inserted, on 1 January 2013, by section 101(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Deforesting pre-1990 offsetting forest land, but excluding any pre-1990 offsetting forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

## Part 2
## Liquid fossil fuels

*(applies, subject to sections 218 and 219, on and after 1 January 2009)*

Owning obligation fuel—

(a) at the time the obligation fuel is—

  (i) removed for home consumption in accordance with the Customs and Excise Act 2018; or

  (ii) otherwise removed from a refinery, other than for export; and

(b) if the total amount of the obligation fuel removed under paragraph (a) exceeds 50 000 litres in a year.

Schedule 3 Part 2 paragraph (a)(i): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

# Part 3
# Stationary energy

## *Subpart 1*

### *(applies on and after 1 January 2010)*

Schedule 3 Part 3 subpart 1 heading: inserted, on 1 January 2013, by section 101(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Importing coal.

Mining coal where the volume of coal mined exceeds 2 000 tonnes in a year.

Importing natural gas where the volume of natural gas imported exceeds 10 000 litres in a year.

Mining natural gas, other than for export.

Using geothermal fluid for the purpose of generating electricity or industrial heat (initial use only).

Combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat.

Refining petroleum where the refining involves the use of intermediate crude oil products (for example, refinery fuels and gases) for energy or feedstock purposes.

Schedule 3 Part 3 subpart 1: amended, on 1 January 2013, by section 101(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## *Subpart 2*

### *(applies on and after 1 January 2014)*

Schedule 3 Part 3 subpart 2: inserted, on 1 January 2013, by section 101(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Using crude oil or other liquid hydrocarbons (other than obligation fuel or as specified in Part 3) where any prescribed threshold is met.

# Part 4
# Industrial processes

## *Subpart 1*

### *(applies on and after 1 January 2010)*

Producing iron or steel.

Producing aluminium, resulting in the consumption of anodes or the production of anode effects.

Producing clinker, or burnt lime, resulting in calcination of limestone, or calcium carbonates.

Producing glass using soda ash.

Producing gold.

Schedule 3 Part 4 subpart 1: amended, on 8 December 2009, by section 85(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### *Subpart 2*

### *(applies, subject to sections 218 and 219, on and after 1 January 2011)*

Schedule 3 Part 4 subpart 2: replaced, on 1 January 2013, by section 101(6) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Operating electrical switchgear that uses sulphur hexafluoride where any prescribed threshold is met.

Importing hydrofluorocarbons or perfluorocarbons, excluding hydrofluorocarbons or perfluorocarbons contained in goods.

Manufacturing hydrofluorocarbons or perfluorocarbons other than through producing aluminium, resulting in the consumption of anodes or the production of anode effects.

## Part 5
## Agriculture

### *Subpart 1—Fertiliser (processor)*

### *(applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 2 brought into force)*

Importing or manufacturing synthetic fertilisers containing nitrogen.

### *Subpart 2—Fertiliser (farmer)*

### *(applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council)*

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen for application to land.

Schedule 3 Part 5 subpart 2: amended, on 8 December 2009, by section 85(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### *Subpart 3—Animals (processor)*

*(applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 4 brought into force)*

Slaughtering ruminant animals, pigs, horses, or poultry by a person who is the operator of a risk management programme registered under the Animal Products Act 1999 for the slaughter of animals.

Dairy processing of milk or colostrum.

Exporting from New Zealand live cattle, sheep, or pigs in accordance with an animal welfare export certificate.

Schedule 3 Part 5 subpart 3: amended, on 1 January 2013, by section 101(7) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Schedule 3 Part 5 subpart 3: amended, on 1 January 2013, by section 101(8) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Schedule 3 Part 5 subpart 3: amended, on 8 December 2009, by section 85(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### *Subpart 4—Animals (farmer)*

*(applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council)*

Farming, raising, growing, or keeping ruminant animals, pigs, horses, or poultry for—

(a) reward; or

(b) the purpose of trade in those animals, or in animal material or animal products taken or derived from those animals.

## Part 6
## Waste

*(applies, subject to sections 218 and 219, on and after 1 January 2011)*

Operating a disposal facility.

# Schedule 4
# Activities with respect to which persons may be participants

s 2A

Schedule 4: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Schedule 4 heading: amended, on 8 December 2009, by section 86(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Part 1
## Forestry removal activities

*(applies on and after 1 January 2008)*

Owning post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Holding a registered forestry right or being the leaseholder under a registered lease of post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Being a party to a Crown conservation contract.

## Part 2
## Other removal activities

*Subpart 1*

*(applies on and after 1 January 2010)*

Producing a product that contains a substance—

(a) that—

  (i) is permanently embedded in the product; or

  (ii) is temporarily embedded in the product, and the product is exported with the substance embedded; and

(b) that would result in emissions if not embedded; and

(c) where—

  (i) a person is required to surrender units under this Act in respect of the emissions that would result if the substance was not embedded; and

  (ii) the result of the substance being embedded in the circumstances in paragraph (a)(i) or (ii) is a reduction from emissions reported in New Zealand's annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement; and

  (iii) any prescribed threshold is met.

*Subpart 2*

*(applies on and after a date determined by Order in Council)*

Storing of carbon dioxide after capture, where—

(a) a person is required to surrender units under this Act in respect of the emissions that would result if the carbon dioxide was not captured and stored; and

(b) the result of the carbon dioxide being captured and stored is a reduction from emissions reported in New Zealand's annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement; and

(c) any prescribed threshold is met.

*Subpart 3*

*(applies, subject to sections 218, 219, and 220, on and after 1 January 2011)*

Schedule 4 Part 2 subpart 3: replaced, on 1 January 2013, by section 102(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Exporting hydrofluorocarbons or perfluorocarbons, including hydrofluorocarbons or perfluorocarbons contained in goods, where any prescribed threshold is met.

Destroying hydrofluorocarbons or perfluorocarbons where any prescribed threshold is met.

## Part 3
## Liquid fossil fuels

*(applies on and after 1 July 2013)*

Schedule 4 Part 3: replaced, on 1 July 2013, by section 102(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Purchasing obligation fuel from 1 or more participants who carry out an activity listed in Part 2 of Schedule 3 where any prescribed threshold is met.

## Part 4
## Stationary energy

*(applies on and after 1 January 2009)*

Purchasing coal from 1 or more participants who mine coal where the total coal purchased exceeds 250 000 tonnes per year.

Purchasing natural gas from 1 or more participants who mine natural gas where the total natural gas purchased exceeds 2 petajoules per year.

# Part 5
# Agriculture

*[Repealed]*

Schedule 4 Part 5: repealed, on 8 December 2009, by section 86(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

# Climate Change Response (Emissions Trading) Amendment Act 2008

| | |
|---|---|
| Public Act | 2008 No 85 |
| Date of assent | 25 September 2008 |
| Commencement | see section 2 |

## 1 Title

This Act is the Climate Change Response (Emissions Trading) Amendment Act 2008.

## 2 Commencement

(1) Sections 165 and 182 of the Climate Change Response Act 2002 (as inserted by section 50 of this Act) come into force on a date to be appointed by the Governor-General by Order in Council on the recommendation of the Minister responsible for the administration of the Climate Change Response Act 2002 made in accordance with section 53 of this Act.

(2) Sections 77 to 80 of this Act come into force on 1 January 2009.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## 51 Regulations upon which consultation has been undertaken before commencement of this section

(1) Any consultation undertaken before the commencement of section 50 in respect of the making of any order or regulations or any other matter requiring consultation under the Climate Change Response Act 2002 is to be treated as consultation for the purposes of that Act.

(2) However, section 166(1) and (3) of the Climate Change Response Act 2002 do not apply to any regulations that come into force after the commencement of section 50 but are based on consultation undertaken prior to the commencement of section 50.

## Reprints notes

### *1 General*

This is a reprint of the Climate Change Response Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### *2 Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### *3 Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

### *4 Amendments incorporated in this reprint*

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Land Transfer Act 2017 (2017 No 30): section 250

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24)

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)

Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)

Crown Minerals Amendment Act 2013 (2013 No 14): section 65

Legislation Act 2012 (2012 No 119): section 77(3)

Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89)

Biosecurity Law Reform Act 2012 (2012 No 73): section 93

Criminal Procedure Act 2011 (2011 No 81): section 413

Climate Change Response Amendment Act 2011 (2011 No 15)

Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57)

Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19)

Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Climate Change Response Act Commencement Order 2007 (SR 2007/336)

Property Law Act 2007 (2007 No 91): section 364(1)

Climate Change Response Amendment Act 2006 (2006 No 59)

Climate Change Response Act Commencement Order 2003 (SR 2003/151)

Local Government Act 2002 (2002 No 84): section 262

Climate Change Response Act 2002 (2002 No 40): section 63A, 64A, 84A, 235

Wellington, New Zealand:

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