

Climate Change Response (Moderated Emissions Trading) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Climate Change Response Act 2002. It modifies the New Zealand Emissions Trading Scheme (NZ ETS), provides further powers to make regulations and administer the principal Act, and makes technical drafting changes to add clarity to the principal Act.

The objectives of the Bill are to—

- reduce competitiveness impacts of the NZ ETS and provide greater certainty for economic growth:
- provide a smoother transition for participants into the NZ ETS and protect against price volatility in early years:
- ensure the NZ ETS is affordable within current fiscal constraints:
- maintain flexibility to respond to possible changes in post-2012 international climate change arrangements:
- maximise the degree of harmonisation with the Australian Carbon Pollution Reduction Scheme, in particular to reduce trans-Tasman competitiveness risks:
- improve the administrative effectiveness of the NZ ETS.

It is intended that certain functions relating to the assessment and processing of individual applications for allocation will be transferred to an Environmental Protection Authority at some point after it is created. It is also likely that other NZ ETS administrative functions will be transferred to that Environmental Protection Authority. No changes are proposed in relation to responsibility for applications for allocation for forest land and fishing quota owners.

The main measures in the Bill—

- shift the commencement of unit-surrender obligations for the liquid fossil fuels, stationary energy, and industrial processes sectors to 1 July 2010;
- provide for a transitional phase to operate from 1 July 2010 to 31 December 2012 during which—
 - participants in the liquid fossil fuels, stationary energy, and industrial processes sectors are only required to surrender 1 eligible unit for every 2 tonnes of CO₂-e emitted and have an option to pay \$25 in lieu of surrendering a unit in satisfaction of unit-surrender obligations; and
 - the export of New Zealand units from the NZ ETS is prohibited, with the exception that the prohibition will not apply to the export of forestry-related New Zealand units;
- provide a transitional phase to operate from 1 January 2008 to 31 December 2012 during which participants in the forestry sector are required to surrender 1 eligible unit for every tonne of CO₂-e emitted and have the option to pay \$25 in lieu of surrendering a unit in satisfaction of unit surrender obligations;
- provide for free allocation of New Zealand units to emissions-intensive, trade-exposed industry on an intensity basis, with eligibility thresholds and phase-out rates for free allocation set at levels to reduce trans-Tasman competitiveness risks;
- delay the commencement of unit-surrender obligations for the agriculture sector until 1 January 2015;
- provide for free allocation of New Zealand units to the agriculture sector on an intensity basis;
- set the point of obligation for the agriculture sector at the processor level initially, with flexibility to move the point of obligation to the farm level in the future;

- increase free allocation of New Zealand units to the fishing sector to 90% of 2005 emissions levels for 1 July 2010 to 31 December 2012:
- provide power to make regulations for the setting of emissions reduction targets.

The Bill also provides further administrative powers that are useful to the effective functioning of the principal Act and makes some technical drafting changes to add clarity to the principal Act.

Part by Part analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Climate Change Response Act 2002.

Part 1 Amendments to Climate Change Response Act 2002

Allocation

Clause 22 inserts *new subpart 2* of Part 4. *New subpart 2* sets out new sections that relate to the issuance and allocation of New Zealand units as follows:

- *sections 68 to 70* define terms associated with issuance and allocation of New Zealand units and set out general processes in relation to issuing New Zealand units and notification requirements if the Crown intends to issue, sell, or allocate units:
- *sections 71, 72, 74, and 76 to 80* set out processes and consultation requirements in relation to allocation to owners of pre-1990 forest land and owners of fishing quota:
- *section 73* sets out the number of units to be allocated in respect of each class of forest land within the pre-1990 forestry sector:
- *section 75* sets out the number of units to be allocated to owners of fishing quota:
- *section 81* establishes who is eligible to receive allocation in respect of carrying out an eligible industrial activity:

- *sections 82 to 85A* provide a methodology for calculating the number of units a person within the industrial sector is entitled to receive. They also set out how a person's allocation for a specified year will be provided through a provisional allocation and an allocation adjustment:
- *section 86* provides the methodology for calculating the number of units a person within the agriculture sector is entitled to receive:
- *sections 86A to 86D* establish processes, decision criteria, and record keeping requirements in relation to allocation to industry and agriculture:
- *section 86E* sets out requirements for the number of Kyoto units or approved overseas units the Crown must hold on a given date relative to the number of New Zealand units issued.

Clause 38 substitutes new *sections 160 to 161C*, which concern reviews of the operation of the emissions trading scheme and powers and processes in relation to allocation to industry and agriculture. New *section 160(5) and (6)* provide the process for making any changes to certain aspects of allocation to industry or agriculture as a result of a review of the operation of the emissions trading scheme. New *sections 161A to 161C* establish powers and processes for providing allocations to industry and agriculture. Among other things, these powers and processes relate to the determination of eligibility, allocative baselines (the number of units a person shall receive per unit of output), and output upon which allocation is based.

Clause 61 inserts new *section 222F*, which concerns transitional provisions for allocation to industry. The section provides that allocation to industry will be reduced by 50% from 1 July 2010 to 31 December 2012. It also provides the methodology for calculating the number of units a person within the industry sector is entitled to receive in respect of the period 1 July to 31 December 2010.

Commencement of surrender obligations

Clause 57 amends section 217, which relates to transitional provisions for penalties associated with the commencement of surrender obligations for each sector. The amendments update section 217 to reflect the amended dates for the commencement of surrender obliga-

tions for the liquid fossil fuels, stationary energy, industrial processes and agriculture sectors.

Clause 59 amends section 219, which relates to mandatory reporting and the commencement of surrender obligations. The amendments establish new dates for the commencement of surrender obligations for the liquid fossil fuels, stationary energy, industrial processes, and agriculture sectors. They also require participants within the liquid fossil fuels, stationary energy, and industrial processes sectors to report emissions for the period 1 July to 31 December 2010 (in addition to existing reporting requirements).

Clause 60 inserts new *section 220*, which aligns unit entitlements and reporting requirements for other removal activities as set out in Part 2 of Schedule 4 with the commencement of surrender obligations for the stationary energy, industrial processes, and synthetic gases sectors.

Transition phase

Clause 61 inserts new *sections 222A to 222G*, which set out transitional provisions which apply in respect of emissions and removals from 1 July 2010 to 31 December 2012 as follows:

- *section 222A* provides that participants within the liquid fossil fuels, stationary energy, and industrial processes sectors are only required to surrender 1 unit for each 2 whole tonnes of emissions from 1 July 2010 to 31 December 2012:
- *section 222B* provides that participants undertaking other removal activities are only entitled to receive 1 unit for each 2 whole tonnes of removals from 1 July 2010 to 31 December 2012:
- *sections 222C to 222E* establish a fixed price option whereby obligations to surrender or reimburse units in respect of emissions from 1 July 2010 to 31 December 2012 may be satisfied by paying \$25 for each unit:
- *section 222G* establishes a prohibition on the export of units from 1 July 2010 to 31 December 2012, with the exception of units received for removals within the post-1989 forestry sector and allocated to the pre-1990 forestry sector.

Forestry

Clause 44 clarifies the exemptions for deforestation of land with tree weeds. In particular, it allows for exemptions when the land has already been deforested and replaces section 184(6) with a new provision that extends the period for the clearing of tree weeds on exempt land. Clearing must commence within 24 months of the date of notification of the exemption and must be completed by the end of the commitment period for which the exemption was granted.

Clause 46 clarifies the provisions for registering as a participant in respect of post-1989 forest land. *Subclause (1)* specifies that an application must be accompanied by a declaration that the post-1989 forest land complies with a pest management strategy under the Biosecurity Act 1993. *Subclause (2)* clarifies that records must be kept in respect of carbon accounting areas. *Subclause (6)* allows participants to redefine the carbon accounting areas of which the person is recorded as a participant.

Clause 47 amends section 189 to allow a person who is considering transferring post-1989 forest land to submit an emissions return prior to the transfer occurring. This allows the net emissions and removals in relation to that land to be established prior to the land being transferred.

Clause 48 replaces sections 190 to 193 with the following new sections:

- *section 190* clarifies the rules regarding the surrender of units in relation to post-1989 forest land. It provides the methodology for calculating the unit balance and the carbon density of carbon accounting areas, and states that a participant is not liable to surrender more units in relation to a carbon accounting area than the unit balance for that area:
- *section 191* specifies the requirements for participants who cease to be registered in respect of post-1989 forest land. It sets out the circumstances under which an emissions return must be submitted, and the requirements of the emissions return:
- *section 192* defines the registered participants and new participants in the event of a transfer of interest in post-1989 forest land and stipulates that an emissions return for the transferred land must be filed in accordance with *section 193*:

- *section 193* specifies the requirements of the emissions return that must be filed when an interest in post-1989 forest land is transferred in accordance with *section 192*.

Agriculture

Clause 4 amends section 2A. In particular, it removes the date before which an Order in Council can be made to change agricultural activities for which persons must be participants from the processor-level point of obligation to the farm-level point of obligation. It provides for a date to be appointed by the Governor-General by Order in Council.

Clause 5 specifies the process by which an Order in Council can be made moving the participants from processor to farmer. It requires the Minister to have regard to certain criteria and allows for the staged entry of farmers as participants.

Clause 56 replaces sections 213 and 214 in subpart 4 of Part 5. New *section 213* clarifies the participants in respect of agricultural activity. New *section 214* clarifies that participants are not required to surrender units in respect of synthetic fertilizer containing nitrogen in some instances.

Clause 58 clarifies voluntary reporting requirements in relation to introduction of farm-level obligations.

Clause 64 adds the exporting of live animals and producing eggs as activities in subpart 3 of Part 5 of Schedule 3.

Clause 65 repeals Part 5 of Schedule 4 removing the ability for a person to opt-in at a farm level point of obligation if a processor level point of obligation applies.

Consolidated groups

Clause 31 provides for participants who give notice of election to form a consolidated group to be treated as a consolidated group for the year in which notice is given if notice is given by 30 September in that year or for the following year if the notice is given after 30 September of that year. It also allows a person who is not a participant but wishes to be treated as a member of a consolidated group immediately upon becoming a participant to do so and to thereby avoid the requirement of opening a holding account upon becoming a participant.

Clause 32 provides for participants who give notice of election to join a consolidated group to be treated as a member of the relevant consolidated group for the year in which notice is given. It also allows a person who is not a participant but wishes to join a consolidated group immediately upon becoming a participant to do so and to thereby avoid the requirement of opening a holding account upon becoming a participant.

Clauses 33 to 35 clarify that only a nominated entity may submit an emissions return on behalf of a consolidated group in respect of one or more activities and removes the ability for a nominated entity to submit an emissions return on behalf of a participant.

Clause 36 imposes restrictions on the time for ceasing membership of a consolidated group.

Joint activities

Clause 37 provides for persons who jointly carry out an activity listed in Schedule 3 or 4 to be treated as an unincorporated body.

Clause 52 amends section 204 which states that the joint and several liability regime in section 157 does not apply to participants who mine natural gas and coal.

Clause 54 clarifies the position in respect of opt-in persons purchasing coal or natural gas.

Technical amendments regarding the operation of the principal Act

Clause 6 makes a number of technical changes to definitions in the Act, including the definition of **forest land** and **waste**. It also adds new definitions for **Convention**, **Protocol**, and **solid biofuels**.

The clauses mentioned below contain a number of technical amendments to support the operation of the principal Act and other amendments made in this Bill:

- *clause 8* enables the Registrar to delegate functions, duties and powers:
- *clause 12* enables the making of regulations to amend the principal Act to update the Schedules relating to the Convention and the Protocol:

- *clause 21* amends the annual deadline for surrender of emission units from 30 April to 31 May:
- *clause 24* clarifies that the chief executive is not required to determine questions of fact when making emissions rulings under the Act:
- *clause 40* enables the making of regulations for fees and charges for emissions rulings:
- *clauses 51 and 55* remove the exception from reporting requirements previously included in sections 201 and 212:
- *clause 53* clarifies that persons mining for natural gas other than for export in the territorial limits of New Zealand, in the exclusive economic zone or in, on or above the continental shelf are not to be treated as importing natural gas for the purposes of the Act:
- *clause 64* updates the participants listed in Schedule 3.

Household Fund

Clause 62 repeals section 223 of the Act relating to the Household Fund.

Regulations relating to targets

Clause 63 establishes a power to make regulations for the setting of targets.

Innovation Fund

Clause 22 removes provision for the Innovation Fund.

Part 2

Consequential amendments

Clause 66 makes consequential amendments to the Climate Change (Unit Register) Regulations 2008 by revoking the definition of **Crown holding account** in regulation 3 as a definition of that term will be included in the principal Act, and replacing regulation 6 with a regulation providing for holding accounts to be held jointly.

Regulatory impact statement—1

Executive summary

The New Zealand Emissions Trading Scheme (NZ ETS) came into force on 26 September 2008. The key purpose of the NZ ETS is to enable New Zealand to comply with its international obligations under the Kyoto Protocol and the United Nations Framework Convention on Climate Change (UNFCCC) (including for reducing and reporting on emissions levels) while providing certainty for economic growth, equity, and flexibility to respond to possible changes in the post-2012 international framework.

There is concern that the NZ ETS as currently designed may not meet these objectives, given the currently weak state of the economy and the recent developments in the Australian Carbon Pollution Reduction Scheme (CPRS). There is a need to ensure that there is a smooth transition for industry into the NZ ETS in order for it to adjust to the scheme while coping with the current economic recession. There is also a need to ensure that the levels of assistance (in the form of free allocation) are appropriate and key sectors of the economy do not experience undue competitive impacts as a result of the NZ ETS. Finally, there is a need to provide business with some certainty regarding the future of the NZ ETS and the levels of emissions reductions that New Zealand will be committed to meeting in the long term.

A number of problems have been identified with the NZ ETS, which the current government has committed to addressing. The issues fall into 2 categories—

- Economic impacts – This includes concerns that the scheme could have large initial impacts on businesses given the current economic climate and that, in the longer term, it could result in the loss of key industries that are exposed to a carbon price ahead of international competitors. A key initiative since the development of the current NZ ETS is the Australian CPRS. The proposed CPRS will provide greater assistance to emissions-intensive, trade-exposed (EITE) industries than the NZ ETS. This could disadvantage New Zealand firms that compete in markets with Australian firms.
- Implementation time frames – There are some implementation dates in the Act which will be difficult to achieve as there is not enough time for allocation plans to be developed and for

the sectors to prepare to enter the NZ ETS. The most pressing is the entry date of the Stationary Energy and Industrial Processes (**SEIP**) sectors which will begin to accrue obligations under the NZ ETS from 1 January 2010.

Accordingly, it is proposed to make amendments to the NZ ETS. These are aimed at reducing the impacts and smoothing the transition for industry during the current recession and revising the allocation methods to align with Australia, providing greater protection for the competitiveness of the EITE sectors of the New Zealand economy.

The proposed amendments will allow New Zealand to comply with its international climate change obligations while retaining an incentive for emissions reductions within New Zealand and minimising the impacts on the economy.

The key amendments included in the preferred option are—

- a transition phase from 1 July 2010 to 31 December 2012 which will lessen the impacts of the NZ ETS on industry in the early years of the scheme. The transition phase includes—
 - a fixed price option of NZ\$25 per tonne;
 - a revised core scheme obligation for SEIP and Liquid Fossil Fuels (**LFF**) participants (who will enter the NZ ETS on 1 July 2010) of only 1 unit for every 2 tonnes of CO₂ emitted for the period 1 July 2010 to 31 December 2012;
- uncapped, intensity-based allocation for EITE industries. Eligibility thresholds will be set to reduce trans-Tasman competitiveness risks;
- the entry date for the agriculture sector will be changed to 1 January 2015. Free allocation to the agriculture sector will be provided on an intensity basis (consistent with industry), and an initial processor-level point of obligation will apply;
- the introduction of a domestic target for New Zealand of a 50% reduction of net greenhouse gases from 1990 levels by 2050, set through regulation.

Adequacy statement

A Regulatory Impact Statement (RIS) was prepared for these proposals, and independently reviewed by Treasury's Regulatory Impact Analysis Team (RIAT). RIAT has formed the view that the level

and quality of analysis presented is not commensurate with the significance of the proposals, which represent major design changes to the Emissions Trading Scheme, and that the RIS does not provide an adequate basis for informed decision-making. Some key risks identified by RIAT include (but are not limited to) the following:

- there is no clear analytical basis for the proposal to align some key design elements of the New Zealand ETS with those in the currently proposed Australian Carbon Pollution Reduction Scheme (CPRS). For example, there is no discussion of the overall suitability or benefits of applying these elements to New Zealand's unique emissions profile and industrial structures;
- there is no discussion of the risks of harmonising with an overseas scheme that has not yet been finalised or agreed and may yet be subject to significant revision. Such risks may include the potential impacts on business certainty and investment decisions, and the overall credibility, sustainability and effectiveness of the NZ ETS;
- there is no information on the implied transition path for firms over the medium-to-long term, particularly given that the proposal is for a temporary period of greater assistance coupled with an ambitious long-term emissions reduction target. Without this, it is hard to assess whether it is likely that the design changes will allow for a smoother transition for business.

Status quo and problem

Outline of current situation

The NZ ETS came into force on 26 September 2008.¹ *Emissions trading* is a market-based approach for achieving environmental objectives where emissions units are traded between participants. In effect, those emitting greenhouse gases have to pay for increases in emissions and are rewarded for decreases. This encourages emissions reductions.

The NZ ETS covers emissions of the following 6 greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydroflu-

¹ Except for the sections of the Act relating to GST which came into force on 1 January 2009.

orocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆). These are the greenhouse gases covered by the Kyoto Protocol.²

The NZ ETS covers the following sectors of the economy: forestry, liquid fossil fuels (transport), stationary energy, industrial processes, synthetic gases, agriculture, and waste.

In respect of each sector covered by the NZ ETS, there are a number of *participants*. Each participant must calculate the emissions from their activities and surrender to the government 1 emission unit for each tonne of greenhouse gas emissions (measured in tonnes of CO₂ equivalent (CO₂-e)) for which they are responsible. There are various types of units that participants can use to meet their obligations under the emissions trading scheme.

The primary unit of trade for the New Zealand emissions trading scheme is the New Zealand unit (NZU). The NZU is a unit issued and allocated by the government under the scheme. One NZU corresponds to 1 tonne of CO₂-e emissions.

In addition, participants can use most types of international Kyoto emissions units for compliance. As with NZUs, this is done by transferring the Kyoto emission units to a surrender account. Kyoto emission units are units established under the rules of the Kyoto Protocol and include units assigned to parties at the start of the commitment period (currently 2008 to 2012) and for certified emissions reductions or removals.

The Act identifies who is required to be a participant under the NZ ETS. For example, in the transport sector, importers of liquid fossil fuels are required to be participants. In general, the *point of obligation* is established at a high level in the supply chain so that there are relatively few participants in each sector. Householders are not participants under the NZ ETS.

Under the NZ ETS, different sectors start to have obligations under the scheme at different times. The forestry sector has an obligation to surrender units in respect of relevant emissions from 1 January 2008.

² Under the Kyoto Protocol New Zealand has committed to limit its emissions to 1990 levels in the first commitment period (2008–2012). This can be achieved through domestic emissions reductions or international offsetting.

Under the current legislation, further sectors will *enter* the scheme as follows:

- the stationary energy and industrial processes sectors will have obligations to surrender units in respect of their emissions from 1 January 2010;
- participants in the liquid fossil fuels sector will have obligations to surrender units in respect of emissions from 1 January 2011;
- participants in the waste, agriculture, and synthetic gases sectors will have obligations to surrender units in respect of emissions from 1 January 2013.

A sector is said to have *entered* the NZ ETS from a certain date where it has obligations to surrender units in respect of emissions from that date.³

As well as imposing an obligation on participants whose activities are covered by the scheme, the NZ ETS provides for *allocation* of units to certain participants. Introducing an emissions trading scheme will impact on certain parts of the New Zealand economy and society more than others. Allocation is a means of providing assistance or compensation to strongly affected parties.

There are 2 main reasons for providing assistance to firms. One is to provide compensation where the introduction of a carbon price has reduced the value of assets. The other is to protect the competitiveness of firms, particularly those that are emissions-intensive and trade-exposed as these firms are unable to pass the carbon cost on to consumers. The appropriate method of allocation will depend on the reason for providing it.

Under the current NZ ETS, allocation has been provided in relation to pre-1990 forest land to compensate land owners for the loss in value of their land as a result of the costs imposed by the NZ ETS. A similar equity rationale applies in the case of allocation to the fishing sector. In respect of other sectors, the purpose of allocation is to avoid the loss of industries that would not have occurred if our competitors had adopted equivalent emissions pricing. The detail of how units are to be allocated to these persons will be set out in the relevant *allocation plan* for that sector. No allocation plans have yet been finalised.

³ A sector may have obligations to report on its emissions (but not surrender units) prior to its “entry” date.

Summary of problem

The key purpose of the NZ ETS is to enable New Zealand to comply with its international obligations under the UNFCCC and the Kyoto Protocol (including for reducing and reporting on emissions levels) at least cost to the economy while providing certainty for economic growth, equity and flexibility to respond to possible changes in the post-2012 international framework.

There is concern that the NZ ETS as currently designed may not meet these objectives, given currently weak state of the economy and the recent developments in the Australian CPRS.

The Government's objectives for the modified NZ ETS are therefore to—

- strike a balance between New Zealand's environmental and economic interests;
- provide a smoother transition for participants than the original scheme;
- achieve harmonisation with the proposed CPRS.

A number of problems have been identified with the NZ ETS, which the current government has committed to addressing, in a manner which is consistent with New Zealand's international trade obligations, including under the World Trade Organisation. The issues fall into 2 categories:

Economic impacts

There are concerns that the NZ ETS as currently designed may cause large negative economic impacts on key sectors and the economy as a whole. These concerns are exacerbated by the current economic downturn and the introduction of the proposed CPRS which provides greater protection to key industries in Australia. There are 2 main areas of concern.

Initial impacts of the NZETS on businesses given the current economic climate

There is a need to provide smoother transition into the scheme while participants are dealing with the current recession and becoming familiar with their obligations and the operations of carbon markets. The concern is that while carbon markets are immature there could be potentially high and volatile carbon prices in early years of the

scheme. It may be difficult for firms to manage their liabilities in such an uncertain environment.

The loss of production from key industries

The concern about loss of production is greatest for firms that are both emissions-intensive (where production leads to significant levels of emissions) and trade-exposed (compete against goods produced in other countries that do not face similar emissions costs). The fear is that a loss of competitiveness from these EITE will result in carbon leakage, with market share being lost to countries that do not have emissions reduction policies in place. This will see a loss in production in New Zealand with no global environmental benefit.

There is justification for providing greater protection to avoid the loss of key industries that are expected to be competitive once international competitors adopt equivalent carbon pricing regimes and there is a concern that the phase-out of free allocation under the current scheme may cause key industries to lose competitiveness. Other countries (in particular Australia) are developing emissions trading schemes incorporating greater assistance for at-risk firms than is currently provided under the NZ ETS.

Harmonisation with the Australian Carbon Pollution Reduction Scheme

A key initiative since the development of the current NZ ETS is the Australian CPRS. The proposed CPRS will provide greater assistance to EITE firms than the NZ ETS. This could disadvantage New Zealand firms that compete in markets with Australian firms.

The New Zealand and Australian economies are closely linked, with many companies operating and trading across the Tasman. Further, Australia is New Zealand's principal export market – 22.9% of New Zealand's total exports were to Australia in the year to June 2008 – and New Zealand is Australia's sixth largest export market – 5.6% of its total exports were to New Zealand in the year to June 2008. Australia and New Zealand also compete in third markets. Of the top 10 export markets for each country, New Zealand and Australia have 6 in common. Differences between the emission trading schemes of both countries, particularly levels of protection, could have a large impact on levels of trade between the 2 countries.

EITE industries likely to be affected by the NZ ETS which may form a significant part of trans-Tasman trade include—

- aluminium oxide:
- copper:
- dairy products:
- petroleum:
- pulp and paper:
- iron or non-alloy steel.

Together, these categories of export are worth around NZ\$500 million and NZ\$1.5 billion per annum to New Zealand and Australian exporters respectively. Seen only in terms of trans-Tasman trade, this represents a significant proportion – around 7% of trans-Tasman exports from New Zealand (possibly rising to 10% of New Zealand exports if it assumed that all ‘confidential exports’ are emissions-intensive) and around 15% of Australian exports.

These figures describe areas of export risk for trans-Tasman trade. They also describe some of the key areas of import substitution risks if the importers concerned are being treated more favourably than domestic producers. However, this is not an exhaustive list – risks to exports and import substitution could change when a carbon price is introduced and could expand to other sectors.

The main source of competitiveness concerns relates to the allocation of permits under the New Zealand and Australian schemes. Stakeholders in both countries have raised this as an issue. The proposed CPRS currently allows for intensity-based allocation. Under this method, allocation is awarded on a unit of production basis for particular activities, based on the industry average emissions for that activity for the period from 2006 to 2008. The total pool of allocation to the industry sector is uncapped and both new and existing firms will be eligible for assistance. Initial levels of assistance are 94.5% of emissions for highly emissions-intensive activities, and 66% for moderately emissions-intensive activities. The free allocation is phased out at the rate of 1.3% per annum.

This method of allocation provides greater protection to levels of competitiveness because it minimises the marginal impacts of an emissions price. It provides an incentive for firms to improve efficiency, but does not provide an incentive to reduce levels of output against business as usual.

In contrast, the NZ ETS currently prescribes a cap on the total pool of free allocation to the industrial sector equivalent to 90% of 2005 emissions from eligible firms. The free allocation is phased out from 2018 to 2030 (a faster rate than under the CPRS). This method aims to avoid large reductions in output and unemployment but otherwise leaves firms facing the full cost of carbon including for new growth. This would invariably lead to some reduction in output.

Differences in allocation methodology between the 2 countries could also affect longer-term investment decisions and there is a risk that industries may shift production across the Tasman. It is difficult to quantify the potential extent of this occurring.

In summary, although competitiveness will depend on a variety of factors, all other things being equal, differences in allocation methodologies could cause certain activities to become more productive in one country over another, leading to one country losing market share or production shifting across the Tasman.

Allocation under the European Union Emissions Trading Scheme (EU ETS)

Another competing economy with an emissions trading scheme is the European Union. Phase 3 of the EU ETS (2013 to 2020) will provide 2 levels of allocation – for those at significant risk of carbon leakage, and for other covered industries. Firms deemed at significant risk of leakage could receive up to 100% allocation based on 2005 to 2007 emissions. However, the free allocation to individual installations will not exceed the level of a benchmark corresponding to the 10% cleanest technologies in the EU. If an installation emits more than the benchmark level, it will need to acquire allowances up to the level of its actual emissions. The allocation to significantly at risk firms decreases by 1.74% per year. Not-at-risk sectors will receive 80% allocation based on 2005 to 2007 emission levels, decreasing to 30% in 2020 and zero in 2027.

Overall allocation in the scheme is made on an absolute basis, with an effective intensity-based allocation to individual participants within the pool via the top 10% benchmark. This approach would be difficult to implement in New Zealand as some industrial sectors have a small number of participants which could lead to difficulties in establishing a benchmark.

It is difficult to quantify the level of allocation for EU firms deemed to be significantly at risk as this will depend on work yet to be completed on benchmarks and the distribution of emissions efficient technologies within industries. Therefore, it is also difficult to determine whether this approach is more or less generous than the Australian and New Zealand schemes. Nominally, it is more generous than the current NZ ETS allocation methodology, but whether this is the case in practice will depend on the stringency of the benchmarks. However, it is worth noting that at-risk sectors under the EU ETS will represent approximately 75% of total industry emissions covered by the EU ETS, which is a larger proportion than the emissions-intensive industries defined under the CPRS.

Implementation time frames

The third problem with the current NZ ETS is that some implementation dates in the Act will be difficult to achieve as there is not enough time for allocation plans to be developed and for the sectors to prepare to enter the NZ ETS. The most pressing is the entry date of the SEIP sector, which will begin to accrue obligations under the NZ ETS from 1 January 2010. There is not time to prepare an allocation plan for these sectors by 1 January 2010. If this date remains, there is likely to be a significant time lag between obligations beginning to accrue for these participants and an allocation plan being finalised (and units transferred).

Objectives

Under the Kyoto Protocol New Zealand is obliged to return emissions to 1990 levels during the first commitment period (2008 to 2012), or take responsibility for the difference through international offsetting. Additionally, New Zealand is currently participating in negotiations for a future international climate change agreement, which is likely to involve deeper commitments for emissions reductions from 2013 onwards.

The key purpose of the NZ ETS is to enable New Zealand to comply with its international obligations under the UNFCCC and the Kyoto Protocol (including for reducing and reporting on emissions levels) at least cost to the economy while providing certainty for economic

growth, equity, and flexibility to respond to possible changes in the post-2012 international framework.

There is concern that the NZ ETS as currently designed may not meet these objectives, given the currently weak state of the economy and the recent developments in the Australian CPRS.

The Government's objectives for the modified NZ ETS are therefore to—

- strike a balance between New Zealand's environmental and economic interests;
- provide a smoother transition for participants than the original scheme;
- achieve harmonisation with the proposed CPRS.

These objectives address the need to ensure that there is a smooth transition for industry into the NZ ETS in order for them to adjust to the scheme and cope with the current economic recession. There is also need to ensure that the levels of assistance are appropriate and key sectors of the economy do not experience undue competitive impacts as a result of the NZ ETS. A further objective is to provide business with some certainty regarding the future of the NZ ETS and the levels of emissions reductions that New Zealand will be committed to meeting in the long term. Finally, the scheme must also be workable and affordable.

Alternative options

Option 1—Change implementation dates in existing legislation

The first option is to leave the majority of the NZ ETS as it is currently legislated, and change the entry date for the Stationary Energy and Industrial Processes (SEIP) sectors.

The entry of the SEIP sectors would be delayed by 12 months from 1 January 2010 to 1 January 2011⁴. This would incur a fiscal cost of roughly \$175 million. The benefits are that the sector has more time to prepare to enter the NZ ETS, which could reduce the impacts

⁴ If the only change to the CCRA (2002) is to delay then the current allocation framework would have to be adhered to. A 12-month delay would therefore be necessary. If there is a change to the allocation framework in the Act, then a shorter time frame for the entry of this sector is possible.

to some extent. It also allows government sufficient time to prepare allocation plans.

This option, however, does not address all of the objectives listed above. It does not improve the competitiveness issues or provide assistance in early years of the scheme. Key differences would remain between the NZ ETS and the CPRS limiting harmonisation between the two schemes leaving the potential for increased transaction costs and competitiveness distortions.

Option 2—Abolish the NZ ETS

The second option is to abolish the NZ ETS. Under this option, the New Zealand government would meet its commitments under the Kyoto Protocol by purchasing emissions credits from international markets.

The fiscal cost of abolishing the NZ ETS is estimated to be \$1.5 billion in Commitment Period 1 of the Kyoto Protocol (2008–2012). The costs for future commitment periods would depend on the emissions reductions required under the 2020 target, but it can be assumed that they would be significantly higher than this.

This option is not preferred as it is not the long-term least-cost option for New Zealand to meet its international climate change commitments and it would not encourage any emissions reductions within New Zealand. The NZIER and Infometrics report (2009) found that in the short run (to 2012) there is little difference between the economy-wide welfare impacts of the government paying, and a narrow tax/trading scheme⁵. However, the government pays option has a key disadvantage as it does not establish a price signal for carbon into the New Zealand economy. This means that firms have little incentive to change their production patterns or invest in emissions-reducing technologies. As the carbon price rises above a certain level⁶, the modelling showed that an emissions trading scheme becomes the cheaper option.

⁵ NZIER and Infometrics (2009) – Economic modelling of New Zealand climate change policy.

⁶ The point at which a carbon price becomes preferable differed between the models. At \$25/tonne Infometrics' model ranks a carbon price equal to a government pays scenario while the NZIER model slightly favours the latter. At higher prices both models show that carbon pricing is least cost.

Climate change is a long-term problem and an international climate change framework of some description will exist long after 2012. In order to meet future international climate change commitments at least-cost to the economy, it is desirable to introduce a carbon price while the cost is still relatively low. This allows sectors time to adjust and smoothly transition to a low carbon economy. Delaying adjustment could be costly in the future as New Zealand would lock in investment choices that are inefficient in the long run when climate change agreements become more stringent and the world moves towards carbon pricing. Retaining the NZ ETS would also bring New Zealand in line with developments in other countries including the European Union, Australia, and the United States.

Option 3—Replace the NZ ETS with a carbon tax

An alternative price-based mechanism to an emissions trading scheme is a carbon tax. This is a very similar instrument to an emissions trading scheme, the fundamental difference being the mechanism by which the price is set. Under a carbon tax, regulators set the price per unit of emissions, whereas under an emissions trading scheme regulators set an allowable level of emissions or ‘permits’. A scarcity of these permits creates a price. A carbon tax therefore provides greater certainty over the price as changes to taxes are usually signalled well in advance, whereas an emissions trading scheme provides greater certainty over the level of emission reductions.

The other important difference is the ability to link the domestic policy response to climate change with the international response. The current global agreement is based around restricting quantities of emissions produced and an international emissions trading scheme. A domestic emissions trading scheme will allow linking with the international regime and other domestic emissions trading schemes. This provides New Zealand firms with access to the cheapest emissions reductions, regardless of where in the world they occur.

Arguments in support of a carbon tax are that greater certainty over price makes the liability easier for businesses to manage, and the administrative costs are likely to be lower than under an emissions trading scheme.

A carbon tax is not the preferred option for the following reasons:

- an emissions trading scheme can ensure New Zealand access to least-cost abatement (within the constraints of any restrictions placed on imports of units) because it gives New Zealand firms the ability to access the international emissions market;
- an emissions trading scheme leaves New Zealand well placed to meet commitments to expected future international climate change agreements;
- emissions trading schemes are increasingly the domestic climate change policy instrument choice of New Zealand's trading partners. Adopting emissions trading in New Zealand provides the best chance of our businesses facing an emissions price that is in tune with the economic climate that New Zealand businesses and their competitors face.

Option 4—Delay the entry dates of all sectors other than forestry until 1 January 2013

Under this option, all sectors would enter the NZ ETS on 1 January 2013, other than the forestry sector. The entry date for the forestry sector would remain at 1 January 2008.

This option would allow ample time for the preparation for sectors to enter the NZ ETS and solve the timing issues. It would also minimise the impacts of the scheme on trade-exposed sectors until 2013. In theory, the economic implications of this proposal are minor, provided there is no significant deforestation and there is an incentive for the post-1989 forestry sector to continue to invest in forestry projects.

However, there is a risk of greater economic implications. A delay of sectoral entry until 2013 would signal uncertainty about the future existence and design of the NZ ETS, and a future carbon price may not be factored into investment decisions, which would delay the adjustment of the economy and increase the costs to New Zealand of complying with its international commitments in the long run.

This option would give rise to significant fiscal costs. The estimated fiscal cost of a delay to 2013 for the Stationary Energy and Industrial Processes (**SEIP**) and Liquid fossil Fuels (**LFF**) sectors is approxi-

mately \$1.275 billion⁷ relative to the status quo (ie, existing CCRA provisions).

The fiscal impact could be partially offset by removing the allocation of NZUs under the Forestry Allocation Plan. It is estimated that the CP1 allocation, after allowing deductions for exemptions, will be approximately 16 million units⁸. Cancelling this would result in savings of approximately \$400 million. The total fiscal cost of this proposal is therefore approximately \$875 million.

This would raise an equity issue for the pre-1990 forestry sector. This would be the only sector facing liabilities under the NZ ETS from 2008 to 2013. If the allocation of units were not provided the sector would not be given any compensation for the loss in the value of their assets.

If sectoral entry dates are delayed, there will be no domestic demand for units generated from the post-1989 forestry sector. In order to ensure sufficient buyers for these units, the Government could consider setting up guaranteed purchasing arrangements for units generated from forestry. There would also be a strong case for permitting exports of units from the post-1989 forestry sector.

From an international perspective, delaying the entry of sectors until 2013 will be seen as a weakening of New Zealand's commitment to address climate change. This is likely to have some effect on New Zealand's bargaining position in the negotiations for future international agreements.

If sector entry dates are to be delayed, the current reporting schedules in the Act could still be retained. Mandatory reporting is currently due to commence for the SEIP and LFF sectors on 1 January 2010. For the agriculture sector, voluntary reporting is due to commence on 1 January 2011, followed by mandatory reporting in 2012. Retaining these reporting schedules would assist sectors with managing their emissions and preparing for entry to the NZ ETS in 2013.

Preferred option

The preferred option is to retain the NZ ETS with amendments to reduce the competitiveness impacts and smooth the transition into

⁷ Assumes a carbon price of \$25.

⁸ This is based on approximate estimates of the deforestation that could occur on exempt areas.

the scheme for industry. It is also desirable to revise the allocation methods to align with Australia, providing greater protection for the competitiveness of the emissions-intensive trade-exposed sectors of the New Zealand economy. This option therefore allows New Zealand to comply with its international obligations and retains an incentive for emissions reductions within New Zealand, while minimising impacts on the economy.

The key amendments included in the preferred option are—

- the SEIP and LFF sectors will enter the NZ ETS on 1 July 2010:
- a transition phase from July 2010 to 31 December 2012, which will lessen the impacts of the NZ ETS on industry in the early years of the scheme and smooth the transition. The transition phase includes—
 - a fixed price option of NZ\$25 per tonne:
 - a revised core scheme obligation for SEIP and LFF participants (who will enter the NZ ETS on 1 July 2010) of only 1 unit for every 2 tonnes of CO₂e emitted for the period 1 July 2010 to 31 December 2012:
- uncapped, intensity-based allocation for EITE industries. Eligibility thresholds will be set to reduce trans-Tasman competitiveness risks:
- the agriculture sector will enter the NZ ETS on 1 January 2015. Free allocation to the agriculture sector will be provided on an intensity basis (consistent with industry), and an initial processor-level point of obligation will apply:
- the introduction of a target for 50% reduction of net greenhouse gasses from 1990 levels by 2050, set through regulations.

SEIP and Liquid Fossil Fuels sectors

The SEIP and LFF sectors will both enter the NZ ETS on 1 July 2010. There will be 2 main changes to these sectors: a transition phase from July 2010 to June 2012 and intensity-based allocation. Participants will still be required to monitor and report emissions from 1 January 2010 as currently provided for under the Act.

Transition phase July 2010 to December 2012

The stationary energy and industrial process (SEIP) and liquid fossil fuel (LFF) sectors would both be brought into the scheme on 1 July 2010 and would face a reduced price for the period from the date of entry to 31 December 2012. For those 2½ years, the price of carbon in the NZ ETS will be moderated through the combination of 2 design changes—

- a revised core scheme obligation, with participants required to surrender only 1 unit for every 2 tonnes of CO₂ emitted (effectively providing a 50% discount):
- a fixed price option of NZ\$25 per tonne.

In order to prevent arbitrage occurring while the fixed price option is in place, a ban will be placed on the export of NZUs converted to AAUs from the SEIP, LFF, and fishing sectors. However, the banking of units freely allocated to these sectors will be permitted. Prohibiting the banking of the free allocation for SEIP, LFF, and fishing sectors would reduce the scale of the market for these participants and lead to opportunities for market manipulation. Allowing banking reduces this risk.

Together, these 2 changes would ensure that the effective price of carbon facing participants in these sectors would never exceed \$12.50 per tonne before 1 January 2013, and could be lower if the international carbon price fell below NZ\$25 over that period.

These changes will substantially lessen the impact of the NZ ETS on participants in these 2 sectors until the end of 2012, providing a far smoother transition for industry and the economy as a whole. In turn this will help to ensure that households do not face large price increases. The changes will therefore provide a significant improvement for the important first years of the scheme's operation, when participants are becoming familiar with their obligations and the operation of carbon markets. Although there could potentially be a big jump in the carbon price at the end of the transition phase, this should not have a large impact on the sector as they will have time to prepare and will be able to monitor movements in the carbon price during the transition period.

This change will reduce the level of abatement from the scheme during the transition phase. However, as firms will be aware that they will face a higher carbon price in the future, there will still be an

incentive to invest in emissions reducing technology and practices. New Zealand will still meet its commitments under the Kyoto Protocol, but the government may have to purchase emissions units from overseas in order to do so. This is discussed in more detail in the section on wider economic impacts.

Intensity-based allocation approach for industry

The second change is the adoption of an intensity-based approach to the free allocation of units to emissions-intensive, trade-exposed (EITE) industry. This will see New Zealand adopting a similar approach to allocation to that which is expected to be put in place in Australia.

Under an intensity-based approach the number of units each firm receives will be updated each year to reflect changes in output levels, effectively reducing the price of carbon faced by those firms eligible to receive assistance. The key elements of the proposed intensity-based approach include—

- activities will be eligible to receive assistance if they meet trade exposure and emissions intensity tests, or are eligible under the CPRS:
- more emissions-intensive activities (likely to be in industries such as food beverage and tobacco manufacturing, petroleum, coal, and chemical manufacturing, and machinery and equipment manufacturing) will receive a higher rate of assistance than less emissions-intensive activities. Initial levels of assistance under the CPRS have been increased to 94.5% and 66% respectively through the Global Recession Buffer Mechanism. However, given the reduced price period until December 2012 and absence of any initial phase-out of free allocation, the initial levels of assistance of 90% and 60% respectively are appropriate under the NZ ETS:
- the level of assistance will be reduced by 50% during the transition phase (from 1 July 2010 to 31 December 2012) and the credits earned from removal activities will also be reduced by 50% during this period:
- the number of units individual firms are entitled to receive will be calculated on the basis of industry average emissions for

each activity or evidence of industry average emissions from Australia:

- new entrants, or firms that are expanding, will automatically see their allocation increased, while shrinking firms will see their allocation decreased:
- the level of assistance will phase out at a rate of 1.3% per annum beginning in 2013:
- the phase out of free allocation will also be considered through a 5-yearly review, with the first review conducted in 2011. Any significant changes to the provision of free allocation will require a 5 year notice period.

This adoption of an intensity-based approach to allocation will provide ongoing protection for the subset of New Zealand firms that would otherwise be most at risk of suffering a substantial loss of competitiveness under the NZ ETS. This is because intensity-based allocation will reduce the marginal cost impacts of an emissions price. An increase in output of a firm will lead to both an increase in the liability to surrender emissions units, and the number of emissions units issued. The marginal cost and competitive effects are therefore reduced by the free allocation. Additionally, free allocation can be provided to both existing firms and new entrants. As this form of assistance takes into account expansion of production of emissions-intensive trade-exposed industries, it supports growth in these industries and reduces the likelihood of carbon leakage.

An intensity-based approach to allocation will therefore help to avoid undue disruption to the economy, and maintain the ability of businesses in sectors where New Zealand currently has a clear competitive advantage to continue to grow. This change would provide savings over the early years of the scheme's operation, but impose increasingly large fiscal costs over the long term.

The allocation methodology and thresholds would be based as much as is sensible on the Australian CPRS model. The CPRS approach is based on extensive analysis, and drawing from the CPRS approach will assist in implementing intensity-based allocation within the limited time available.

The CPRS model uses allocative baselines based on the historical industry average of emissions per unit of output. This method provides

an incentive for firms to be more efficient than the industry average while still maintaining competitiveness with international firms.

This change is likely to reduce the level of abatement from the scheme particularly beyond 2018 (when the current allocation is due to start phasing out). New Zealand will still meet its commitments under the Kyoto Protocol, but the government may have to purchase a greater amount of emissions units from overseas in order to do so. Again, this is discussed further in the section on wider economic impacts.

Implementing the Australian allocation methodology would bring about benefits from reduced transaction costs for businesses operating across the Tasman and reduced trans-Tasman competitiveness distortions, particularly for emissions-intensive companies.

Given the increased benefits that industry will receive under intensity-based allocation, the current Innovation Fund will be removed from the Act as it is no longer necessary. In addition, the provision for the Household fund under section 223 of the Act will be removed.

Forestry sector

Only minor changes will be made to the treatment of forestry under the modified NZ ETS—

- emissions liabilities from the pre-1990 and post-1989 forestry sectors will be covered by the NZ\$25 fixed price option that accrue before 1 January 2013;
- the reduced 1:2 core obligation will not apply to either pre-1990 or post-1989 forests. This mitigates the risk that a short-term reduction in price could drive short-term deforestation, causing an increase in emissions;
- the forestry allocation plan process will be continued.

These changes are expected to have only minimal impacts on the sector and the wider economy. The \$25 fixed price option is in line with the expected international price, so the sector faces the same incentive to reduce emissions as under the current scheme. It will provide a modest benefit to forest owners wishing to deforest during Commitment Period 1 (CP1), through greater price certainty.

The forestry sector will be permitted to bank and export units during the transition phase. The arbitrage risks associated with this are low, and restrictions on banking and exports would reduce the economic

incentives for this sector adding costs to the economy as a whole. Allowing banking is desirable to assist with managing the long-term nature of forestry investments. However, it may be necessary to ban exports from the forestry sector in the future in the event that the NZ ETS and the CPRS are linked. In this case, foresters would be able to sell units to the Australasian market.

To reduce litigation risk and to retain flexibility over the second tranche of allocation, it is necessary to amend the draft allocation plan. It is further recommended to amend the Act to include as much detail as possible on forestry allocation, specifically to make explicit that only 21 million units will be transferred during CP1 and the approach to distributing units.

Agriculture sector

As agriculture makes up nearly 50% of New Zealand's emissions, it is important that it is covered by the NZ ETS. However, the impact of the NZ ETS as currently legislated on the agriculture sector could be significant, given that the sector has limited abatement options available to them. Therefore there is a strong case for facilitating a gentler transition for agriculture into the ETS than is currently proposed. There is also a case for ensuring we can reflect on Australian decisions expected in 2013 about possible inclusion of agriculture in the CPRS from 2015, before agriculture enters the NZ ETS.

The entry date for the agriculture sector will therefore be changed to 1 January 2015. The delayed start will substantially lessen the impact of the NZ ETS on the agriculture sector until the end of 2015, providing far smoother transition for the sector and the economy as a whole.

A further amendment to the agriculture sector is to shift to an intensity-based approach to allocation. The approach to phase-out will be consistent with industry. In line with the industry allocation provisions, there would be a review of allocation policies every 5 years.

The adoption of an intensity-based approach will protect the competitiveness of this industry until more effective emission abatement technologies have been developed, or until there is more effective global action on agricultural emissions, including by developing countries, than is the case with the current international framework.

A processor level point of obligation⁹ will initially be adopted for the agriculture sector (as the Act currently allows for), and the Act will be amended to keep open the option of a farm-level point of obligation at a later stage, subject to stakeholder views and a number of key administrative challenges being successfully addressed. The options for a hybrid point of obligation will be removed from the Act.

Allocation to agriculture should be based on the current year's output, rather than historic output levels. To ensure that agriculture sector participants can receive allocation well in advance of surrendering units, the surrender obligation for all sectors should be extended from the end of April to the end of May.

The legislation will specify certain criteria to which the Minister must have before making an Order in Council moving the point of obligation to the farm, including—

- the ability to enforce compliance;
- the costs including administrative and compliance costs;
- the benefits in terms of additional mitigation.

The reporting dates for the sector will remain unchanged. Voluntary reporting by the agriculture sector is due to commence on 1 January 2011, followed by mandatory reporting in 2012.

Fishing sector

As fishing is an emissions-intensive trade-exposed sector, the allocation will be increased from the current level of 50%, to 90% of 2005 emissions for two and a half years (July 2010 to December 2012). The transition phase (ie, 50% progressive obligation) will also apply to this sector and the number of units allocated to this sector will be reduced by 50% during the transition phase. The fiscal and economic impacts of this change are likely to be small.

It is proposed that legislation will specify a total number of units for free allocation to the fishing sector and that this number will be equivalent to 90% of 2005 emissions for two and a half years (ie, to match the reduced price period), adjusted for a 2:1 progressive obligation being in place. It is further proposed that the number placed

⁹ The point of obligation refers to the participant who is obliged to surrender units for the emissions related to their production. For the agriculture sector, this could be at the farm level or the food processor level.

in legislation be based on a Ministry of Fisheries fuel consumption estimate for 2005 of 216 million litres. This is believed to be the best estimate available. This amount of fuel would result in 700 000 emissions units being granted to the sector.

Introduction of a 50 by 50 emissions reduction target for New Zealand

The New Zealand government intends to introduce a 50% reduction in New Zealand's carbon-equivalent net emissions, as compared to 1990 levels, by 2050. The *50 by 50* target is intended to—

- make a definitive and credible statement about New Zealand's long-term contribution to addressing climate change:
- give taxpayers, business, industries and farmers clear, long-term certainty about where domestic climate change policy is headed so that they can plan and invest accordingly.

Key criteria in the development of the *50 by 50* target were that it needs to be internationally credible, suitable to New Zealand's unique economic profile and time-bound. A *50 by 50* target is not inconsistent with the IPCC's 450 parts per million climate stabilisation scenario and New Zealand's international negotiating position proposes supports a global long-term concentration target of not more than 450ppm. It is also broadly equivalent to the Australian long-term target of a 60% reduction by 2050 compared to 2000 emission levels.

It is proposed that a regulation making power for setting targets be introduced. The regulation making power would also require the target to be reviewed following the release of future Intergovernmental Panel on Climate Change Assessment Reports. The regulation making power would have the same legal effect as a target under the existing gazette mechanism but has the benefit of having a perceived higher status than a target set under the existing mechanism. Furthermore, a regulation making power would provide flexibility to amend the target in response to future IPCC assessment reports.

Fiscal impacts

The table below sets out an assessment of the fiscal implications of the preferred option:

Fiscal costs

(\$m, costs shown as positive, savings as negative)

	Pre-2013	2013	2015	2017	2013-2017	2020	2030
SEIP entry dates and p.o.	588	0	0	0	0	0	0
Ind allocation	-177	-181 to -351	-179 to -350	-177 to -348	-896 to -1748	-49 to -221	411 to 586
Ag entry date	0	281	0	0	573	0	0
Ag allocation	0	0	106	74	270	305	1,581
Fishing allocation	4	-14	0	0	-14	0	0
Total	415	86 to -84	-73 to -244	-103 to -274	-67 to -919	84 to 256	1992 to 2167

Note: Costs are based on a unit price of \$25 until 31 December 2012 and \$50 from 1 January 2013.

Implications for the wider economy

The modified NZ ETS will cover all sectors and all gases within a reasonable time frame. It will therefore achieve its original objective of reducing emissions and allowing New Zealand to comply with its international obligations in a manner that is least-cost to the economy, equitable and flexible. It sends a clear signal that the economy will face a carbon price into the future, providing businesses with certainty to plan investment decisions.

The transition phase under the modified NZ ETS will smooth the transition for participants in early years of the scheme and minimise the chance of high or volatile carbon prices. This will give firms time to adjust to their obligations under the NZ ETS while minimising the impact of the scheme during this period.

In addition, moving to an intensity-based allocation model will minimise the impacts of competitiveness on New Zealand firms and industries that are exposed to international competitors who do not face equivalent carbon charges. Intensity-based allocation provides an incentive for firms to improve efficiency, but does not provide an incentive to reduce levels of output, and can be better targeted at those sectors whose international competitiveness is most at risk from the

introduction of a price on carbon. Recent economic analysis¹⁰ has shown that intensity-based allocation will assist with lowering the costs of the NZ ETS and protecting EITE industries.

These 2 changes will assist with achieving the objectives of striking a balance between New Zealand's environmental and economic interests, and providing a smoother transition and greater certainty for economic growth into the future.

Transition phase

The transition phase will operate for a relatively short period of time, and there is expected to be minimal change in total costs to the economy between this option and the status quo. The difference will be where the costs fall within the economy.

The transition phase will result in lower cost to industry than the NZ ETS as currently legislated for this period if the international carbon price is above \$12.50 per tonne (which is expected to be the case). Firms in the SEIP sector are expected to benefit the most. The duration of the transition phase is too short to affect investment decisions, and as firms will be aware that they will face a higher carbon price in the future there will still be an incentive to invest in low emissions and energy efficient technologies.

The transition phase will result in a smaller increase in fuel costs than the current NZ ETS, lowering the cost to households. Petrol is expected to rise by about 3c/litre (1.8%) which is less than the 6.1c/ litre (4%) that is estimated to result from a carbon price of \$25 per tonne, and the increase in electricity prices is estimated to be 0.8c/KWh (3.6%) compared to 1.4c/KWh (6.3%) from a carbon price of \$25. These figures assume that the carbon costs are fully passed through.

However, while the transition will reduce costs to industry the government will have to meet any difference between the fixed price option and the international carbon price in order to meet New Zealand's liability under the Kyoto Protocol.

¹⁰ NZIER and Infometrics (2009) Economic Modelling of New Zealand Climate Change Policy.

Forestry

One sector that could experience significant impacts is the forestry sector. This sector can adjust quickly to changes in the carbon price, so there is the potential that a short-term reduction in price could drive short-term deforestation as foresters seek to convert land while the prices are relatively low. This would cause a short-term increase in emissions. The forestry sector has therefore been excluded from the reduced obligation but will be able to access the \$25 fixed price option, which approximates the expected international carbon price over this period providing the same incentive to reduce emissions as the current NZ ETS.

Unlike the SEIP sector, the pre-1990 forest sector will also receive a full allocation of units during the transition phase as the free allocation represents compensation for the long-term reduction in land values faced by the sector.

The ownership of post-1989 forests is currently the only *net removal activity* allowed under the NZ ETS. In contrast to the rest of the economy, owners of these forests benefit from a higher price on carbon. Reduction of expected returns to forestry or high levels of uncertainty among investors could reduce investment in new planting and participation of existing post-1989 foresters in the ETS – both outcomes come at a high economic cost. It is difficult to quantify this impact. However, it should be noted that even relatively small changes to the new planting rate can create a significant economic impact. If the new planting rate under the modified scheme is 10,000 ha per year lower than the new planting rate under a scheme that allows exports, an economic benefit to New Zealand (potentially in the order of \$125-\$200 million¹¹) would be delayed.

In order to provide some certainty for investment decisions, the banking and exporting of emission units will be permitted for both the pre-1990 and post-1989 forestry sectors during the transition phase. The risk of arbitrage from allowing exports during the transition phase is considered to be low as the level of deforestation for pre-1990 forests is not expected to be significant. Allowing exports for post-1989

¹¹ This is based on findings from both Scion (2008) and University of Canterbury that the expected value of forestry land with a \$30 international price on carbon would increase by \$5,000-\$8,000. To estimate the economic cost of a decrease planting these values are multiplied by the number of new hectares planted over CP1 (25,000 ha).

foresters will ensure that the sector receives the full economic incentive for new investment.

Intensity-based allocation

Intensity-based allocation for industry is likely to give rise to a fiscal saving from 2010 to 2012 of \$177 million, as initially a smaller proportion of firms will receive assistance. It is also estimated that there will be savings of \$181–\$351 million in 2013 and \$49 to \$221 million in 2020. By 2030 there will be a fiscal cost of approximately \$411–586 million. The fiscal cost arises from the government taking responsibility for a proportion of emissions from the firms that receive free allocation and the cost will depend on the chosen rates of assistance.

An intensity-based allocation approach will provide greater protection to the competitiveness of the industries that receive assistance and will lower the cost of the emissions trading scheme on these participants. Protecting the competitiveness of more firms by providing a higher rate of assistance for a longer period will benefit eligible firms, but will come at a cost to the economy as a whole, by delaying the transition of the New Zealand economy to a carbon constrained world. The consistency with New Zealand's international trade obligations would also need to be taken into account. The review mechanism will allow for future changes to free allocation.

The costs and benefits of intensity-based allocation on the wider economy are somewhat ambiguous. Economic theory suggests that placing responsibility for emissions with those who reduce them is the least-cost way to meet emissions targets; however, this ignores adjustment costs, economic regrets when other countries may introduce emissions pricing in the future and some general equilibrium effects, particularly around reduction in exports. Recent economic modelling by NZIER and Infometrics suggests that these factors may be significant, and that it may be beneficial to freely allocate units to emissions-intensive trade-exposed firms. NZIER and Infometrics also found that free allocation based on a lump sum payment to compensate firms for stranded assets is more costly than production-linked free allocation.

The Infometrics/NZIER report (2009) concluded that competitiveness at risk issues need to be considered. Free allocation, linked to pro-

duction can be a cost-reducing mechanism of dealing with high costs of abatement and lack of action by other countries. The report also found that free allocation for stranded assets (provided as a lump sum payment) is more costly than production-linked free allocation. As technology options become available and the rest of the world takes steps to implement equivalent pricing regimes, the benefit of free allocation becomes reduced. Although the phase out of free allocation under this option is gradual, it will be subject to a 5-yearly review and can be changed if New Zealand's economic circumstances are such that this level of assistance is no longer beneficial.

Under an intensity model, highly emissions-intensive firms will receive more assistance than under the previous allocation approach. However, some firms that would have received assistance under the previous approach will fall below the emissions-intensity thresholds and will be ineligible to receive assistance under the new approach. The firms that do not receive allocation will however still benefit from the transition phase in the first two and a half years after SEIP and LFF enter the scheme.

Preliminary analysis from the Ministry for Economic Development suggests that the firms eligible for assistance would come from the following industries:

- food, beverage, and tobacco:
- non metallic mineral products:
- petroleum, coal, and chemical manufacturing:
- machinery and equipment manufacturing:
- aluminium drawing, rolling, and extruding:
- basic iron and steel manufacturing.

Using the same approach as Australia for allocation methodologies and price controls could bring about benefits from reduced transaction costs for businesses operating across the Tasman and reduced trans-Tasman competitiveness distortions, particularly for emissions-intensive companies. It will also enable New Zealand to draw on the Australian experience and analysis when developing allocation methodology.

There is no single perfect approach to allocation, and no single perfect approach to determining eligibility. Having said this, use of the Australian approach has some attraction in that Australian analysis suggests that their thresholds are likely to cover those sectors whose

international competitiveness is most at risk from the introduction of a price on carbon. To quote the Australian Treasury (Australia's Low Pollution Future, the Economics of Climate Change Mitigation, 2008, p. xiv)

In the absence of unified global action, an emission price may distort the international competitiveness of Australia's emissions-intensive trade-exposed sectors (EITEs). There is little evidence of carbon leakage. Nevertheless, allocation of some free permits to EITEs, in accordance with the shielding arrangements proposed eases the transition to a low-emission economy for shielded sectors while maintaining incentives for emission reductions.

Introduction of a 50 by 50 emissions reduction target

As it is proposed that the target be set through regulation, with a review mechanism, it is unlikely that the economic consequences will be significant. The economic implications of setting the 50 by 50 target in the purpose provisions of the CCRA are likely to depend on New Zealand's obligations under any future international climate change agreement. If New Zealand's international emission reduction obligations are less stringent than 50% by 2050 then the target could impose costs on the economy. To prevent this, the Government could adjust the target to reflect New Zealand's international commitment.

It is difficult to estimate the economic impacts of such a target due to the long time frame involved, and no economic modelling of the costs and benefits of a 50 by 50 target has been completed for New Zealand. However, studies completed internationally, including work by the Garnaut Climate Change Review and the Australian Treasury suggest that economies continue to grow when taking on large emissions reductions targets, albeit at a slower rate. For example the Australian Treasury found that with an emissions reduction target of 60% below 2000 levels by 2050, average annual economic growth is reduced from 1.3% to 1.1% for Australia. This model assumed staged international participation of carbon pricing by the rest of the world.

The costs to New Zealand of such a target will be influenced by the actions of the rest of the world and will be lower if other countries take on similar targets. However, economic modelling still indicates that the economy will continue to grow even when international par-

icipation is limited. Although the recent modelling by NZIER and Infometrics only modelled scenarios out to 2020, the results showed that the New Zealand economy continued to grow under all scenarios, even under a \$100 carbon price and no action by the rest of the world.

The 2006 Stern Review found that if the world does not act to address climate change, the overall risk could be equivalent to losing at least 5% of global GDP per annum now and forever. If a wider range of risks are taken into account, this could rise to 20% or more. Similarly the Garnaut Climate Change Review conducted in 2008 also found that the costs of inaction were greater than the costs of action.

Although New Zealand is only responsible for a small proportion of global emissions, there is a risk that New Zealand could suffer significant environmental effects as a result of climate change. Additionally, if the global economy is affected this will have flow-on effects to the New Zealand economy. The only way to address these environmental and economic risks is through a global agreement and New Zealand's ability to influence global agreements relies on its active participation in negotiations, and its reputation as a country that is willing to do its fair share and meet its international obligations.

In addition, there are international and trade risks if New Zealand is not perceived to be doing its fair share to address climate change. New Zealand is a small, open economy that relies on international agreements and treaties to support its trade. There is also a risk that trade barriers could be established against countries that have not taken on emissions reduction commitments.

Risks

Fiscal cost to the Crown being higher than anticipated. Both the transition phase and the intensity-based allocation shift some of the costs of New Zealand's international liability from emitters to the crown, and subsequently increase the risk to the Crown. This is a particular risk for intensity-based allocation. If the cost is on emitters, emitters have the choice as to whether to purchase permits to cover their emissions, reduce output or invest in mitigation options. The Crown has fewer options for managing emissions, and will be liable for any emissions that exceed the level of emissions specified in Kyoto and successive agreements.

The transition phase will operate for a relatively short period of time so the risk is not large. Intensity-based allocation is a long term provision that could potentially expose the crown to large risks. However, the 5 year review will provide a mechanism for the policy to be changed if the cost is becoming excessive.

Arbitrage arising from the fixed price option. If units issued through the fixed price option fall below the international price the units could be sold at a profit at the Crown's expense. The level of arbitrage risk will depend on the difference between the fixed price option and the expected international price. In order to mitigate this risk, the export of units will be banned from all sectors who can access the fixed price option, other than forestry. This will not reduce the risk of arbitrage completely (since banking is still possible), but might reduce the level of administrative complexity. It is desirable to allow banking for SEIP and LFF sectors, as a ban on banking would reduce the size of the market for these participants and may lead to opportunities for market manipulation.

Compressed timetable. Although delaying the entry date for the SEIP sector by 6 months will allow more time to develop an allocation plan, and there is a greater chance of achieving this time frame than the time frame under the current Act. However, there is still a risk that the allocation process would not be complete by the entry date of 1 July 2010.

The most likely option for mitigating this risk is to draw on work completed under the Australian CPRS. The Australians have made significant progress towards producing activity definitions and allocative baselines and are expected to complete the majority of this work by the end of 2009. Drawing on Australian work as much as possible is likely to allow the timetable to be met.

Opposition to intensity-based free allocation: There is a risk of opposition to this approach from industry stakeholders who may expect free allocation under the current model, but will receive no allocation under the proposed new approach. This is mitigated to some extent by the transition phase.

Implementation and review

The Bill for substantive amendments to the NZ ETS will be introduced into the House in late September, and is due to be passed in December 2009.

Updated draft regulations for the stationary energy and industrial processes sectors involvement in the NZ ETS were released for consultation alongside draft regulations on unique emissions factors and other removal activities on 2 June 2009. These regulations are due to be published by 1 October 2009.

Transition phase

The fixed price option would operate by participants being able to pay a fixed charge to fulfil surrender obligations. The export of units would be banned from the LFF, SEIP and fishing sectors in order to minimise the risk of arbitrage, and units issued under the fixed price option would be for immediate surrender. A ban on the exports of units could be achieved through existing regulatory powers, but legislative changes may be needed to ban the conversion of NZUs to AAUs for export.

Intensity-based allocation

The provision for allocation to industry will be further developed following passage of the Bill, with a view to providing firms with as much certainty as possible by July 2010.

Review

It is necessary to review the NZ ETS and the allocation model on a regular basis. Five yearly reviews are proposed, which is in line with the Australian CPRS. In terms of operation, the scheme will be effective if participants are calculating emissions and surrendering returns on a timely basis.

Consultation

The New Zealand government announced a Special Select Committee Review of the Emissions Trading Scheme and related matters on

12 December 2008. The Review has very broad terms of reference, which include (among other things)—

- consider the impact on the New Zealand economy and New Zealand households of any climate change policies, having regard to the weak state of the economy, the need to safeguard New Zealand's international competitiveness, the position of trade-exposed industries, and the actions of competing countries;
- examine the relative merits of a mitigation or adaptation approach to climate change for New Zealand;
- examine the relative merits of an emissions trading scheme or a tax on carbon or energy as a New Zealand response to climate change.

The period for public submissions closed on 27 February 2009. In total 278 submissions on the terms of reference were received and 102 submissions were heard by the Select Committee. Key industry submissions highlighted concerns about loss competitiveness if faced with a price on carbon prior to international competitors. Additionally many were in favour of a smoother transition into the NZ ETS and many submitters supported fixed price options in early years of the scheme and an output-based approach to free allocation. The Review reported to Parliament on 31 August 2009. The submissions to the Review and the findings from the Review have been reflected in the development of these amendments. The Government has also engaged with the Climate Change Iwi Leadership Group on modifications to the NZ ETS.

In addition, updated draft regulations for the stationary energy and industrial processes sectors involvement in the NZ ETS were released for consultation alongside draft regulations on unique emissions factors and other removal activities on 2 June 2009. Submissions on this package of draft regulations closed on 13 July 2009.

The Ministry of Economic Development, Ministry of Transport, Ministry of Agriculture and Forestry, Ministry of Fisheries, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri and the Treasury were consulted on these proposals.

Regulatory impact statement—2

Second order amendments

Executive summary

The New Zealand Emissions Trading Scheme (NZ ETS) came into force on 26 September 2008. The key purpose of the NZ ETS is to enable New Zealand to comply with international obligations (such as those under the Kyoto Protocol) while providing certainty for economic growth, equity, and flexibility to respond to possible changes in the post-2012 international framework.

The governing legislation for the NZ ETS contains a number of administrative provisions which enable the implementation of the NZ ETS. Administrative powers and responsibilities are vested in a number of different government agencies. These powers and responsibilities include functions such as registering and deregistering participants, specifying the data required to comply with obligations and receive entitlements and the manner in which that data is collected, and administering exemptions to obligations under the NZ ETS.

Since the NZ ETS was introduced, a number of areas have been identified where:

- the provisions of the governing legislation do not provide desirable levels of certainty and clarity regarding administrative powers and processes;
- the absence of certain administrative powers or processes in the governing legislation makes it difficult to effectively implement the NZ ETS;
- there is a lack of clarity regarding the inclusion of certain activities in the NZ ETS.

The preferred option is to amend the governing legislation for the NZ ETS to:

- clarify certain administrative powers and processes;
- introduce administrative powers or processes useful for effective implementation of the NZ ETS; and
- clarify the inclusion and exclusion of certain activities in the NZ ETS.

Adequacy statement

The Ministry for the Environment has reviewed the RIS and considers that, given the purpose and scale of the proposals, the RIS is adequate according to the adequacy criteria.

Status quo and problem

Outline of current situation

The New Zealand Emissions Trading Scheme (NZ ETS) came into force on 26 September 2008¹². ‘Emissions trading’ is a market-based approach for achieving environmental objectives where emission units are traded between participants. In effect, those emitting greenhouse gases have to pay for increases in emissions and are rewarded for decreases. This encourages emissions reductions.

The NZ ETS covers emissions of the following 6 greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆). These are the greenhouse gases covered by the Kyoto Protocol¹³.

The NZ ETS covers the following sectors of the economy: forestry, liquid fossil fuels (transport), stationary energy, industrial processes, synthetic gases, agriculture and waste.

In respect of each sector covered by the NZ ETS, there are a number of ‘participants’. Each participant must calculate the emissions from their activities and surrender to the government 1 emission unit for each tonne of greenhouse gas emissions (measured as CO₂e) for which they are responsible. There are various types of units that participants can use to meet their obligations under the emissions trading scheme.

The primary unit of trade for the New Zealand emissions trading scheme is the New Zealand Unit (NZU). The NZU is a unit issued and allocated by the government under the scheme. One NZU corresponds to 1 tonne of carbon dioxide equivalent emissions.

¹² Except for the sections of the Act relating to GST which came into force on 1 January 2009.

¹³ Under the Kyoto Protocol New Zealand is obliged to take responsibility for all emissions above 1990 levels for the first commitment period (2008-2012)

In addition, participants can use most types of Kyoto emission units for compliance. As with NZUs, this is done by transferring the Kyoto emission units to a surrender account. Kyoto emission units are units established under the rules of the Kyoto Protocol.

The Climate Change Response Act identifies who is required to be a participant under the NZ ETS. For example, in the transport sector, importers of liquid fossil fuels are required to be participants. In general, the ‘point of obligation’ is established at a high level in the supply chain so that there are relatively few participants in each sector. Householders are not participants under the NZ ETS.

Under the NZ ETS, different sectors start to have obligations under the scheme at different times. The forestry sector has an obligation to surrender units in respect of relevant emissions from 1 January 2008. Under the current legislation, further sectors will “enter” the scheme as follows:

- the stationary energy and industrial processes sectors will have obligations to surrender units in respect of their emissions from 1 January 2010;
- participants in the liquid fossil fuels sector will have obligations to surrender units in respect of emissions from 1 January 2011;
- participants in the waste, agriculture and synthetic gases sectors will have obligations to surrender units in respect of emissions from 1 January 2013.

A sector is said to have “entered” the NZ ETS from a certain date where it has obligations to surrender units in respect of emissions from that date.¹⁴

As well as imposing an obligation on participants whose activities are covered by the scheme, the NZ ETS provides for ‘allocation’ of units to certain participants. Introducing an emissions trading scheme will impact on certain parts of the New Zealand economy and society more than others. Allocation is a means of providing assistance or compensation to strongly affected parties.

The governing legislation for the NZ ETS contains a number of administrative provisions which enable the implementation of the

¹⁴ A sector may have obligations to report on its emissions (but not surrender units) prior to its “entry” date.

NZ ETS. Administrative powers and responsibilities are vested in a number of different government agencies. These powers and responsibilities include functions such as registering and deregistering participants, specifying the data required to comply with obligations and receive entitlements and the manner in which that data is collected, and administering exemptions to obligations under the NZ ETS.

Summary of problem

Since the NZ ETS was introduced, a number of areas have been identified where—

- the provisions of the governing legislation do not provide desirable levels of certainty and clarity regarding administrative powers and processes:
- the absence of certain administrative powers or processes in the governing legislation makes it difficult to effectively implement the NZ ETS:
- there is a lack of clarity regarding the inclusion of certain activities in the NZ ETS.

The issues noted above make it more difficult for the NZ ETS to function effectively.

If the NZ ETS is implemented in its current form, administrators and participants would have to reach their own views as to the correct interpretation of certain ambiguous provisions. This is not considered a desirable outcome because different views may be reached leading to confusion and likely legal challenge of exercise of administrative powers. The absence of administrative mechanisms could lead to a number of inequitable outcomes for participants and costs incurred by the Crown. Finally, a lack of clarity regarding coverage of certain activities would create confusion and could have inequitable outcomes.

Objectives

The objective of the proposal is to increase certainty for participants and administrators and enable more effective implementation of the NZ ETS, thereby enhancing the credibility and effectiveness of the NZ ETS.

Alternative options

An alternative option would be that any administrative powers considered to be ambiguous are not exercised. However, the administrative powers in question are necessary to the functioning of the Act. Accordingly, taking this option would result in an NZ ETS that is not functional in certain respects. It is also likely that there could be legal challenge of the failure to exercise some of the powers in question.

Preferred option

The preferred option is to amend the governing legislation for the NZ ETS to—

- clarify certain administrative powers and processes;
- introduce administrative powers or processes necessary to effectively implement the NZ ETS; and
- clarify the inclusion and exclusion of certain activities in the NZ ETS.

Further information regarding the amendments falling into each of these categories is set out below.

Clarifying administrative powers and processes

Amendments are proposed to clarify certain provisions where the current wording could be considered to be ambiguous. These amendments are primarily recommended to reduce the risk of legal challenge to the exercise of administrative powers. Although in some cases the risk of challenge is considered to be low, the consequences of a successful challenge would be serious. Clarifying the meaning of these provisions will create greater certainty which will be beneficial for both participants and administrators.

Clarifying cost benefit analysis requirements in exemption provision Section 60 provides for exempting persons from NZ ETS obligations by Order in Council. Amongst other things, the process under section 60 requires the Minister to be satisfied of certain matters before recommending the making of an order, and includes requirements for a comparison of costs and benefits. However, as currently drafted the cost-benefit analysis requirements are unclear. Consequently, there is a high risk that it will not be possible to satisfy the process requirements for making an exemption.

It is recommended that section 60 be amended to clarify the Minister must be satisfied the costs of an exemption do not exceed the benefits of an exemption. Costs may include economic costs as a result of exempted persons not facing incentives for mitigation. Benefits may include reduced administrative and compliance costs from not requiring exempted participants to monitor and report emissions.

Clarifying the chief executive's forestry-related reporting obligations

Section 89 requires the chief executive to report information separately for each of the activities in Part 1 of Schedule 4 (which covers removal activities in post-1989 forests). There are four forest removal activities listed under that Schedule: owning post-1989 forest land; holding a registered forestry right or being the leaseholder under a registered lease of post-1989 forest land; and being a party to a Crown conservation contract.

A number of parties are likely to undertake more than 1 of those 4 activities, but only provide 1 combined emissions return. The chief executive will in practice therefore not have sufficient information to meet an obligation to report separately for each of these activities.

An amendment is desirable to specify that the chief executive only needs to report emissions and removals in relation to the four activities in Part 1 of Schedule 4 in aggregate, rather than separately for each activity.

Clarifying ability to make changes to composition of joint participant registrations

Under the Act, a participant can be made up of more than 1 person (natural or corporate). All of these persons are jointly and severally liable for the obligations of the "participant". The Act does not contain provisions specifying how the chief executive is to manage changes to the composition of a multi-person participant. A risk exists that the adding of people to, or removing of people from, a participant by the chief executive is unlawful and not valid. The risk of invalidity—

- to people leaving the participant is that they remain liable for the other people who continue to be the participant:

- to people remaining as the participant is that the leaving person continues to have rights to participant benefits:
- to the Government is that if a person suffers loss due to an unlawful process, then that person may seek to recover that costs from the Government.

Therefore it is recommended that the Act be amended to specify the process for changing the people who make up a multi-person participant.

Clarifying ability to specify the “Land Transfer Date” in the Forestry Allocation Plan

Section 71 of the Act sets out the issues that must or may be set out in the Forestry Allocation Plan. One of the issues that may be covered in the Draft Allocation Plan is a date or event on which the land is to be treated as transferred.

The proposal set out in the Draft Allocation Plan confirms the Act’s default that the land is to be treated as transferred on the “settlement date”, which in a sale and purchase situation would have been agreed by the seller and purchaser. This is effectively the date when the new owner would have taken control of the land and paid any outstanding monies.

The transfer date is important because it affects the amount of allocation that pre-1990 land receives. The rationale behind the decreased allocation for land that was transferred after 31 October 2002 was that once the previous government first announced its intention to introduce policies to control rates of deforestation, a willing buyer could have factored that into the purchase price they were willing to pay for the land. However, this rationale does not apply to land that was transferred after 31 October 2002 by operation of law, for example by order of the court, or by transmission on the death of a joint owner.

The drafting of section 71 may inadvertently catch such situations and could result in such a new owner receiving a reduced allocation. Recent legal advice casts doubt over whether the wording of section 71 unambiguously gives the Minister the power to clarify the meaning of “transfer” via the Allocation Plan to ensure that the above policy intent is met, and that land that has been transferred by oper-

ation of law is not automatically ineligible for a higher allocation of units.

In order to remove the risk of legal challenge on this point, it would be desirable to amend section 71 to clarify that the Forestry Allocation Plan whether issued before or after this amendment may define what is meant by the concept of ‘transfer’ for the purposes of allocation.

Clarifying that the chief executive has power to specify and approve locations in the forest area where information will be collected

MAF is developing methodology to measure emissions and removals for forest land, rather than relying on generalised lookup tables. This methodology will be reflected in the forestry sector regulations. One of the features of this measurement approach is the requirement that an applicant’s forest land-holding be divided, and information collected at locations within each divided area, in a manner to be further prescribed in regulations and/or standards. Information collected at the specified locations will be used to calculate forest emissions and removals.

The Act does not currently provide the chief executive with a clear authority to specify either how an applicant’s land-holding should be divided, or the locations in the forest where prescribed information should be collected. The division of forest land area and the location of the information collected will have a significant impact on the carbon measurement accuracy. This power is therefore crucial to ensuring that the areas and locations within which the information is collected are not the subject of debate or challenge by participants, nor to arbitrary relocation, say to a less representative forest area. This issue can be addressed by making a small amendment to the regulation making power, to make it clear that the chief executive can specify the areas and locations from which data must be collected.

Clarifying of the treatment of mining natural gas within the exclusive economic zone (EEZ)

It is necessary to amend the Act to clarify that a person carrying out the activity of mining natural gas, other than for export, within the exclusive economic zone (EEZ) or in, on or above the continental shelf is not also carrying out the activity of “importing” natural gas under Part 3 of Schedule 3.

The Act, as currently drafted, is ambiguous on this point as the provisions regarding the activity of 'importation' are defined by reference to the Customs and Excise Act 1996 which could result in gas mined in New Zealand's gas fields located outside a 12 nautical mile limit being considered to be 'imported'. However, section 205 of the Act expressly provides that the activity of mining natural gas that occurs in the EEZ is mining activity for the purposes of the Act. There is an argument that a person mining gas in the EEZ falls under both the activity of mining and is also technically importing gas which would require that person to register as an importer of gas and comply with the provisions of the Act.

This ambiguity should be clarified by an amendment to provide that a person carrying out the activity of mining natural gas that occurs in the EEZ does not also carry out the activity of "importing" natural gas simply because it is mining gas from a field located outside the 12 nautical mile limit.

Clarifying relevance of subsequent commitment periods to NZU issuance

Section 69 prescribes the process for the issuance of NZUs into a Crown holding account, in accordance with a direction from the Minister for Climate Change Issues to the New Zealand Emissions Unit Registrar. Section 69(2)(c)(i)–(iv) lists a number of matters the Minister must have regard to if there is no subsequent commitment period specified or determined under the Protocol or no successor international agreement to the Protocol. This subsection was only intended to guide the issuance of units in subsequent commitment periods (rather than be considered as part of the CP1 issuance process). The section needs to be amended to clarify this policy intention.

Clarifying that only a nominated entity can submit a return for a consolidated group

The consolidated group provisions are proving very difficult for MAF and MED to operationalise for what is likely to be a very small number of participants who would qualify, and elect to form, a consolidated group for emissions reporting purposes. Allowing multiple

corporate entities that are participants in multiple sectors with different reporting timetables and bases is proving unworkable.

At the very least, the Act should be amended to clarify that only the nominated entity can submit an emissions return on behalf of the members of the consolidated group, and that only one emissions return per calendar year can be submitted for the consolidated group.

Clarifying the ability to delay registration of forestry participant until fees and charges paid

Section 167 empowers the making of regulations to prescribe fees and charges. Regulations under this section have already been brought into force for post-1989 forest participants. Those regulations specify that an applicant wanting to join the scheme must pay an upfront fee with his or her application. If the processing of their application is particularly time consuming, they will then be charged an additional amount based on the number of hours worked.

Under the Act as currently drafted it is not clear that the scheme administrator has the ability not to register a forestry participant in the scheme if that participant has failed to pay any additional amount charged. This is likely to make it more difficult for the administrator to recover any outstanding charges.

An amendment is desirable to make it clear that the administrator is not required to register a participant until all fees and charges relating to the application have been paid.

Confirming pro-rata approach for NZUs earned when land within a Carbon Accounting Area is transferred

NZUs are earned for increases in carbon stocks in a Carbon Accounting Area (CAA). Where part of the land of a CAA is transferred to another participant it is necessary to apportion NZUs earned between the transferor and transferee. It was always envisaged that the apportionment should be made on a pro-rata per hectare basis. As drafted, the Act permits a pro-rata apportionment, but does not exclude the possibility of another basis for apportionment and officials consider that the Act should be amended to explicitly provide that the apportionment will only be made on a pro-rata per hectare basis.

Requiring the Registrar to give effect to directions

While it is implicit in the Act that the Registrar must follow a chief executive's direction under section 18B, unlike every other direction from ministers and the chief executive referred to in the Act, it is not explicitly stated that the Registrar must follow the direction. Clarity, and consistency with all other directions in the Act, is important here because section 18B directions can relate to actions that include closing a person's holding account and potential forfeit of that person's emissions units to the Crown.

Clarifying obligation to retain records

For the avoidance of doubt, it should be made clear that the obligation in section 67(2) to retain records continues whether or not the person continues to be a participant.

Clarifying that 1 emissions return only to be filed per year

For the avoidance of doubt, it should be made clear in section 189 that a specific post-1989 participant can only file 1 emissions return per year (this reduces implementation complexity), albeit that they can still mix and match the Carbon Accounting Areas they include in each return.

Clarifying treatment of returns in respect of less than a hectare

Clarify the Act so that a person must calculate the number of units to be surrendered where the area of post-1989 forest land is being deregistered by making the calculation in relation to a whole or part of a hectare. Currently, section 190(2) assumes that the areas of post-1989 forest land being deregistered are whole hectares when this will not always be the case.

Amending timing of surrender relative to date of emissions return

In section 191(3), replace "by the same" with "within 20 working days of" (at present the final surrender date is the same as the final date for submission of the emissions return).

Clarifying timing for notification of ceasing to carry out activity

Insert “as soon as practicable” after “must notify” in section 188(3)(b) (at present the timing for notification is not specified).

Introducing or amending administrative powers and processes

Amendments are proposed to make the administration of the Act more straightforward. Although the Act is workable in its current form, there are a number of areas where administration of the Act is cumbersome and/or could prove costly or create unintended liabilities for participants. Some changes are therefore required to make the Act work more effectively.

Creating the ability to waive fees and charges

It is proposed to introduce regulation-making powers that provide a power to exempt, waive and refund fees and charges to correct administrative errors (eg, inadvertent double payments by an ETS participant). Similar powers exist under many enactments including the Biosecurity Regulations. MAF’s internal legal advice has been that without an explicit power, MAF is unable to make refunds to correct administrative mistakes. This has already raised issues of equity and fairness in 1 case. While this is a minor technical amendment it is important to avoid any risk of bringing the ETS into disrepute through perceptions of inequity or unfairness in the administration of the ETS.

Creating the ability to apply for a tree weed exemption for deforestation between 1 January 2008 and the date exemptions are granted

The NZ ETS contains provisions to allow deforestation of “tree weeds” (eg, wilding pines) to apply for and receive an exemption from the deforestation provisions of the Act (becoming a mandatory participant, filing an emissions return and surrendering emissions units). These exemption provisions were inserted so that efforts to eradicate tree weeds would not be discouraged by the NZ ETS.

As currently drafted, the Act restricts the availability of exemptions to land that was forested at the time the exemption is granted. Exemptions therefore cannot be granted to landowners who have already deforested since 1 January 2008 (this amounts to an estimated

800 ha to date). This situation means that land owners may be penalised for carrying out weed eradication activities because, due to timing issues, the tree weed exemption is not available to them. This is particularly concerning because landowners are often required to deforest weed trees by regional councils as part of the regional pest management strategy to manage the spread of the trees. Further, it affects the ability of government departments like DOC and LINZ to pursue their mandates of removing tree weeds under other legislation and government policy.

The existing situation is unfair to those landowners who have continued their efforts to eradicate tree weeds and now face a liability. It also risks worsening the spread of tree weeds where control programmes have ceased.

Accordingly, it is proposed that the Act be amended to allow tree weed forest land that has been deforested since 1 January 2008 to be eligible for an exemption (once an exemption process is available). This does not result in an increased level of deforestation or increased fiscal costs over and above what was estimated to be incurred by the tree weed exemption overall – as the area of pre-1990 tree weed forest is finite.

Creating the ability to charge fees for emissions rulings

The Act currently provides for fees to be charged in respect of persons who opt-in to the NZ ETS. However, the Act does not currently provide for fees to be charged in respect of persons who are mandatory participants in the NZ ETS. This presents a problem because mandatory participants are able to make binding ruling applications. These applications are likely to be complex and will require significant time to process. It is also likely that external legal advice (from the Crown Law Office) and expert technical advice may be required in respect of some or all applications. Accordingly, it is strongly recommended that the Act be amended to allow for cost recovery in respect of applications for binding rulings by mandatory participants.

Enabling the delegation of the Registrar's Powers

Under the Act as currently drafted, the Registrar of the Emission Unit Register cannot delegate his or her powers.

Officials consider that a delegation of the Registrar's powers is critical for the workability of implementing the NZ ETS. The complexity and volume of work required of the Registrar means that these tasks will need to be completed by staff reporting to the Registrar.

It is therefore recommended that the Act be amended to include the ability for the Registrar to delegate his or her powers. If no ability to delegate powers is included in the Bill, either the Registrar's responsibilities will go unfulfilled or there will be a question about the validity of the Registrar's actions (eg, transfers of emission units).

Defining farming in relation to land ownership

If the participant in the agriculture sector is at farm level rather than processor level, then subpart 4 of Part 5 of Schedule 3 currently defines the activity as farming, raising or growing animals for reward or trade. This definition identifies farmers operating under a range of farm ownership structures and contractual arrangements. For example it identifies both farmer landowners and farmers who do not own land, but do raise livestock. For simplification of administration, an amendment would be desirable to make it clear that the participant is the person owning land on which animals are farmed. An amendment would provide the ability to move the obligation to another party in the event of long-term land use agreements.

The amendment would significantly enhance the ability to cross check legal participants against registrations to ensure full participation, and improve consistency with treatment of the forestry sector. This is important given the number of farm level agriculture participants. The Agriculture Technical Advisory Group on emissions trading also recommended this amendment in order to minimise the compliance costs of the scheme and ensure comprehensive coverage of emissions.

Providing for removal from the Register of Participants after obligations have been met

Certain persons who become mandatory participants of the ETS are obliged to notify that they should be entered on the Register of Participants by the administrator. They then have an obligation to file an emissions return and surrender emissions units to satisfy their obligation.

Under section 59 a participant is entitled to notify the administrator that the participant has ceased to be a participant and should be removed from the Register of Participants, regardless of whether or not the participant has yet filed their emissions return and/or surrendered sufficient emissions units to meet the participant's liabilities.

A more efficient and effective de-registration mechanism would be for the participant to remain on the Register of Participants until such time as the participant has met all the obligations. At that time the administrator would initiate the de-registration. It is recommended that section 59 be amended accordingly.

Restricting timing for electing to have activities removed from consolidated group

To reduce administrative complexity, it is proposed to restrict the timing for members of consolidated groups to elect to cease being a member of that group. It is proposed that elections received by 30 September in a given year would be effective from the beginning of the following year, and elections received after 30 September in a given year would be effective from the beginning of the year following the next year. This is consistent with the timing constraints for entities to join consolidated groups, and would avoid part year reporting – bringing administrative benefits for the groups themselves as well as for the chief executive.

Clarifying that section 64 directions will not be published

Section 64 is concerned with the entitlement of a participant to receive units in respect of removal activities. Under section 64(3), the Minister of Finance directs the Registrar on how many units to transfer to a particular participant's holding account.

As presently drafted, the Act is ambiguous as to whether directions made under section 64 should be published on the Registrar's Internet site. It is recommended that the Act be amended to clarify the position. On balance, officials recommend that directions made under section 64 should not be published.

Although principles of transparency would suggest that directions should be published, officials consider that concerns about commercial sensitivity support non-publication of section 64(3) directions. Stakeholders raised concerns regarding commercial sensitivity of

emissions and removals information when the NZ ETS was being established. These concerns are reflected in a number of provisions of the Act which protect against disclosure of potentially commercially sensitive information regarding emissions and removals activity (see section 89(3)). Similarly, while the Act requires information to be available regarding individual holdings of Kyoto units, information regarding holdings of NZUs is only required to be made available in aggregate (see section 27(2) and (3)).

Requiring record keeping by primary participant following opt-in
Section 212 of the Act provides that a mandatory participant who mines coal or natural gas (a primary participant) is not required to comply with the requirements of section 62 or file an emissions return in respect of coal or gas that is purchased by an opt-in participant. Section 62 requires a participant to maintain records relevant to emissions and removals associated with the relevant activity (in this case mining coal or natural gas), and calculate the emissions and removals from the relevant activity. An emissions return reports on those emissions and contains an assessment of liability to surrender units.

A primary participant should not be required to surrender units in respect of coal or gas that is purchased by an opt-in participant. However, officials consider it important that the primary participant be required to report on and keep relevant records regarding all coal or gas produced. In the absence of such an obligation, it will be very difficult to reconcile data provided by primary and opt-in participants. There is a real risk that gaps will emerge that cannot be verified and compliance cannot be enforced.

Under the Act as currently drafted, it is not entirely clear whether a primary participant can be required to keep records regarding the coal or gas that is produced and on-sold to opt-in participants. Accordingly it is proposed that the Act be amended to clarify that record keeping and reporting obligations do apply in respect of all gas and coal mined, including that purchased by opt-in participants.

A similar issue arises under section 201 in respect of the liquid fossil fuels sector. Accordingly, it is proposed that a similar amendment be made to section 201.

Streamline the process for updating the schedules to the CCRA to reflect amendments to the KP and the UNFCCC that are in force for New Zealand

The UNFCCC and Kyoto Protocol are included in the Act as Schedules I and II.

It would be desirable to have a streamlined procedure (for example through Order in Council) for updating the Schedules of the Act to reflect changes in the international instruments that are already in force in New Zealand.

For example, the annexes to the UNFCCC set out the developed country Parties with specific obligations under the UNFCCC (Annex I), some of which have additional financial obligations (Annex II). The binding emissions reduction commitments for Annex I Parties are reflected in Annex B to the Kyoto Protocol. As new parties join these Annexes, this will need to be reflected in the Schedules to the Act.

Providing for authorised representatives in respect of joint activities

Under the Act, landowners who are joint participants may be recorded on the register of participants in the manner prescribed in regulations. From an ease-of-implementation perspective it is preferable to require 1 of the joint participants to be appointed when there are more than 25 joint participants. This person will be an authorised representative and will be entered on the Register of Participants (“on behalf of” all joint owners). This will mean the chief executive can deal with that person in relation to all matters relating to the participation of those persons in the NZ ETS.

Inserting and applying a definition of **Crown holding account**

It would be desirable for the Act to distinguish between (i) holding accounts held by the Crown and controlled by the Minister of Finance (“Administrative Accounts”); and (ii) accounts held by Ministers (eg, Minister of Conservation) as participants in the NZ ETS (“Participant Accounts”).

Administrative Accounts are held by the Crown for—

- Kyoto compliance; and
- administrative aspects of the ETS (ie, surrender accounts, conversion accounts, holding accounts for pools of NZUs, etc).

Inserting a definition distinguishing Administrative Accounts from Participant Accounts is desirable because a number of sections in the Act refer to Crown Accounts. These sections contemplate Administrative Accounts, but do not contemplate, and should not apply to, Participant Accounts.

Clarifying when forest land is treated as being deforested before 1 January 2008

The current wording in the Act results in an interpretation contrary to the previously announced policy intent of treating as deforested on 31 December 2007 any area which meets solely the conditions in section 4(5)(a) and (b), namely where—

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

The Act adds in an additional test by requiring that where land-use change has not commenced prior to 31 December 2007, an area that is cleared and meets section 4(5) of the Act should not be regarded as deforested unless independent evidence exists that deforestation had commenced prior to 31 December 2007. This interpretation is proving difficult for participants to prove and MAF to verify.

To minimise confusion and provide clarity for participants it is recommended the Act be amended to clarify that deforestation is deemed to have occurred before 1 January 2008 if on 31 December 2007 the land had—

- no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or were likely to have, tree crown cover of an average width of less than 30 metres; and
- no other merchantable timber from exotic forest species; and
- conversion to land that is not forest land is complete within 4 years of the date of clearing.

Advice from the national Kyoto inventory agency is that New Zealand will not incur any cost under Kyoto from this amendment.

Amendment to the definition of forest land

The current interpretation of the definition of forest land under the Act unnecessarily disadvantages participants compared with interpretation under the Kyoto Protocol, and is also more difficult to implement operationally than the Kyoto definition. This is because the existing definition of forest land is satisfied by relatively small numbers of juvenile trees being forest species. That is, it does not take many trees to meet the crown cover threshold test at maturity and therefore become forest land.

It is proposed to amend the definition of forest land in the Act to remove problematic and unnecessary differences with the international rules.

Joint venture participants in the natural gas sector and coal sector

Under the current provisions of Act, persons who carry out activities jointly are together treated as being the participant for the purposes of the NZ ETS. The joint participants are required to report jointly on their emissions, and have joint and several liability for the participant's obligations under the NZ ETS.

The oil and gas sector has advised that requiring joint venture partners carrying out the activity of mining natural gas to be joint participants under the NZ ETS would create a number of problems. The sector argues that the current rules would—

- result in confidential information being disclosed to the other joint venture partners;
- require a level of co-operation that joint venture partners in this industry do not usually undertake (because joint venture partners would have to manage their liabilities jointly under the NZ ETS); and
- give rise to difficulties around opt-in by downstream purchasers (as joint venture parties often separately market their respective offtake).

It is proposed to amend the Act to address these concerns. There remain strong policy reasons for retaining the joint participant requirements in respect of other activities. However, these policy reasons do not apply to the same extent to persons mining natural gas through the vehicle of an unincorporated joint venture. Notably, the number

of participants is likely to be manageable and there will be ways to ensure that all emissions are accounted for.

It is therefore recommended that the Act be amended to provide that where more than 1 person is named on a permit relating to mining natural gas, each of the permit holders is to be treated as the person carrying out the activity of mining natural gas and must comply with the obligations of a participant under the Act. Following this amendment, joint venture participants would no longer be required to be joint participants under the NZ ETS, although related companies appearing on the same permit would still have the option to do so.

If the Act is amended as proposed (to provide for individual permit holders to be the participant under the NZ ETS) a number of consequential changes will also be required. These consequential amendments include providing sufficient flexibility regarding joint reporting for related companies carrying out the activity of mining natural gas, as well as ensuring that opt-in provisions work effectively where gas is purchased from a member of the group which is not in fact the participant, such as a parent company of the company carrying out the mining activity.

The coal sector has not made representations on these issues. However, officials have advised that it would be appropriate to extend the proposed amendments to include the coal sector. The problems identified by the natural gas sector are likely to be applicable, at least to some extent, to participants in the coal sector – although the problems are likely to be less widespread because joint ventures are a much less common arrangement in the coal sector. As in the natural gas sector, the proposed amendments would not result in a large increase in participant numbers (at present, the increase in participant numbers in the coal sector would be negligible) and there will be ways to ensure that all emissions are accounted for.

Emissions rulings

The Act contains provisions under which persons can apply for rulings from the chief executive on a number of matters. Rulings can cover whether something a person is doing is an activity listed in Schedule 3 or 4 of the Act, and whether the person is a participant in respect of an activity listed in Schedule 3 or 4 of the Act. Rulings can

also cover the correct application of certain regulations made under the Act.

As presently drafted, the Act is not entirely clear regarding the scope of the rulings that can be obtained. In particular, the Act can be interpreted to mean that a ruling could be obtained in respect of technical questions prior to a person's compliance with the Act. This would be an inappropriate use of the rulings process as it would effectively be a request to verify information prior to compliance. Further, it would be time consuming and technically challenging for the chief executive to provide such a ruling.

Accordingly, it is proposed that the Act be amended to clarify the scope of the binding rulings regime. In particular, it is proposed that the Act be amended to specify that the chief executive will not make an emissions ruling where doing so would require the chief executive to determine questions of fact contained in the information supplied by the person requesting the ruling.

Streamlining access to consolidated groups

The Act makes provision for participants who are members of the same group of companies to form a "consolidated group". Formation of a consolidated group allows members to submit a single emissions return, operate a joint holding account, and jointly meet their surrender liabilities under the Act. It is expected that the consolidated group provisions will simplify compliance for groups of companies with a large number of subsidiaries carrying out activities under the NZ ETS.

As presently drafted, the rules regarding the formation of consolidated groups are reasonably restrictive. To some degree, this is necessary in order to ensure administrative efficiency. However, there are some areas where the rules could be relaxed or amended to make it easier to form or become part of a consolidated group. It would also be possible to reduce the time delays that currently apply to the formation or joining of a consolidated group in certain circumstances.

It is proposed to amend the Act to streamline the consolidated group provisions to facilitate use of these provisions whilst maintaining administrative efficiency.

Post-1989 forestry – wilding pines

Under current provisions, the Act requires applicants who register as a participant in respect of post-1989 forest land to declare that any action taken by the applicant after 1 January 2008 in relation to that land (including, but not limited to, removal of any existing vegetation prior to planting of the forest species on the land) complied with the provisions of the Resource Management Act 1991, including any plan under that Act, and the Forests Act 1949, as in force at the time that the action was taken. It is proposed that the Act also require applicants to declare their compliance with a pest management strategy under the Biosecurity Act 1993 in the same way that the Act currently reinforces the need to comply with Resource Management Act and Forestry Act requirements.

The basis for this proposal is that district plans under the Resource Management Act 1991 do not generally require the natural spread of wilding trees to be controlled, whereas the Biosecurity Act 1993 does require these controls. The proposed change does not introduce additional compliance issues, but reinforces the need to comply with pest management strategies.

Pre-1990 tree weed exemption

Amendments are required to ensure the exemption's effective operation and relate to—

- extending the time limits on the tree weed exemption so that the current requirement to complete deforestation within 24 months is extended to within the first commitment period; and
- enabling the chief executive to maintain control over the level of liabilities under this exemption by limiting tree weed exemption approvals per commitment period within a fixed budget.

Carbon accounting areas

A carbon accounting area (CAA) is the area of forest land for which a post-1989 Participant is required to report the change in forest carbon stocks over time. Currently, a Participant can only define a CAA when they first register the forest land into the ETS. Early implementation experience is that some aspects of the provisions relating

to CAAs are overly cumbersome, likely to lead to unnecessarily high transaction costs, and could create unintended liabilities for participants. Amendments are therefore proposed to—

- ensure that an existing participant is able to redefine the way in which their forest land is assigned to CAAs without incurring any additional obligation to surrender emissions units or having to pay any fee for reapplication;
- clarify that the chief executive must keep an up-to-date record of the net balance of units in relation to a CAA including one that is redefined;
- make the process of transfers and carbon accounting more transparent and simpler for both a vendor and purchaser. Specifically, the area of land transferred must be an entire CAA, and the transferor will submit an emissions return that accounts for emissions or removals from the date of the last return to the date of transfer. This will be submitted within 20 working days of transfer and surrender any units in accordance with the Act.

Clarifying the inclusion and exclusion of activities

Amendments are proposed to clarify that certain activities are or are not covered by the NZ ETS. These amendments are necessary to create certainty for participants and for departments administering the NZ ETS.

Clarifying the inclusion of emissions from biofuels combusted for electricity generation or industrial heat

The Act is currently ambiguous regarding coverage of emissions from combustion of biofuels. It is unclear whether or not these emissions are covered by Schedule 3, Part 3, which includes emissions from the combustion of “...waste for the purpose of generating electricity or industrial heat”.

It is proposed that the Act be amended to clarify that emissions from biofuels combusted for electricity generation or industrial heat are covered by the Act.

Including egg producers and live animal exporters in the scheme

Subpart 3 of Part 5 of Schedule 3 currently does not explicitly include egg producers. Subpart 3 of Part 5 of Schedule 3 also does not include the emissions from animals that are then exported as live animals. The policy aims to cover poultry emissions comprehensively but egg producers were inadvertently excluded. Although this does not have large fiscal implications (~\$0.5 million at \$25/tonne), it would be highly inequitable for poultry meat producers.

Excluding the export of live animals may create an incentive to slaughter animals off-shore in countries not facing a price on carbon. An amendment is required to close this loophole.

Removing “Producing cable using a nitrogen cure process” as a mandatory activity

Independent expert advice has been obtained on the industrial process of “producing cable using a nitrogen cure process”. This advice states that nitrogen used in the production of cable does not, of itself, generate greenhouse gas emissions.

New Zealand does not report any emissions from this source in the national GHG inventory. Officials made inquiries internationally last year and did not find any other developed parties (to the Kyoto Protocol) explicitly reporting emissions from this source in their inventories.

Consequently the activity of producing cable using a nitrogen cure process should be removed from the scope of the Act.

Nitrogen fertilisers

Currently, the activity description attributes a nitrous oxide emission to all imported and manufactured nitrogen fertilisers. However, fertiliser imported or manufactured for industrial purposes would not have an agricultural nitrous oxide emission and should not be included. Clarifying that the use of fertiliser in manufacturing and industrial processes is not subject to obligations under the Act would resolve this.

Fiscal impacts

Given the administrative nature of the amendments, none of the changes have significant fiscal impacts, although the changes do eliminate some small fiscal risks.

The table below identifies the changes that do have a fiscal impact and sets out an assessment of the fiscal implications of those changes—

	Risk of fiscal cost eliminated before 31 December 2012 (\$)	Risk of fiscal cost eliminated from 1 January 2013 (\$)
Inclusion of emissions from biofuel combustion	Eliminates risk of lost revenue of approx \$0.75m pa	Eliminates risk of lost revenue of approx \$0.75m pa
Inclusion of egg producers	n/a	Eliminates risk of lost revenue of \$0.5m pa
Ability to charge fees for emissions rulings	Eliminates risk of administrative costs in the region of \$0.5m – \$1m pa*	Eliminates risk of administrative costs in the region of \$0.5m – \$1m pa*
Total Risk of Fiscal Cost eliminated	\$1.25m – \$1.75m pa	\$1.75m – \$2.15m pa

*It is very difficult to estimate the annual cost of administering the emissions rulings regime because rulings applications are demand driven so that it is difficult to estimate the volume, scope, and complexity of the rulings applications that would be received. Accordingly the figures provided are an indicative range only.

Implications for the wider economy

The proposed amendments to the NZ ETS will increase certainty for participants and administrators and enable more effective implementation of the NZ ETS. This will enhance the credibility of the NZ ETS which will have benefits to the wider economy. No negative implications for the wider economy have been identified.

Risk assessment

No significant risks have been identified in respect of this proposal. Conversely, the proposal is expected to reduce risks in respect of implementing the NZ ETS.

Implementation and review

A Bill making substantive amendments to the NZ ETS is expected to be introduced into the House in late September, and is due to be passed in December 2009. The amendments proposed in this statement will be included as part of that Bill.

It will be important to inform the relevant sectors regarding clarification of inclusions and exclusions from the NZ ETS. Plans are in place to contact relevant parties once policy is clarified. As regards administrative processes, changes and clarifications will be communicated as part of the ongoing process of implementing the NZ ETS. Agencies responsible for administering the NZ ETS will continue to monitor the effectiveness of the administrative provisions in the governing legislation and make further recommendations for amendment if required. The effectiveness of administrative provisions may also be reviewed in the context of the scheduled reviews of the operation and effectiveness of the NZ ETS, as required by section 160 of the Act. The first review is to be completed by the end of 2011.

Consultation

The Ministry for Agriculture and Forestry and the Ministry of Economic Development have important roles in implementing the NZ ETS and a large number of the proposed amendments to the governing legislation are recommended changes initiated by these agencies. The Ministry for the Environment has worked with these agencies to develop the proposed amendments, which are agreed on by all agencies involved. The following further government departments have been consulted on the proposals and have not raised any concerns: the Treasury, the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Department of the Prime Minister and Cabinet, and Te Puni Kōkiri.

The proposed amendments are largely administrative in nature. Accordingly, there has been no formal stakeholder consultation. However, some of the proposed clarificatory amendments result from questions raised by stakeholders in the course of consultation on specific aspects of the NZ ETS. In particular, a number of amendments arise from consultation with the stationary energy and industrial processes sector on draft regulations relating to that sector (for example, the amendment to remove the activity of producing

cable using a nitrogen cure process and the amendment to clarify the treatment of emissions from the combustion of biofuels).

Hon Nick Smith

**Climate Change Response
(Moderated Emissions Trading)
Amendment Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Climate Change Response (Moderated Emissions Trading) Amendment Act **2009**.

2 Commencement

5

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Climate Change Response Act 2002.

Part 1

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**Amendments to Climate Change
Response Act 2002****4 Application of Schedules 3 and 4**

- (1) Section 2A is amended by repealing subsection (1) and substituting the following subsection:

15

“(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

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“(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—

25

“(A) applies that subpart; or

“(B) amends an Order in Council that applies that subpart; and

“(b) applies subject to sections 217 to 221, **222A to 222D, and 222G**.”

30

- (2) Section 2A(5) is amended by omitting “before that date”.

- (3) Section 2A(6) is amended by omitting “before that date”.

- (4) Section 2A(8) is amended by omitting “1 January 2011 if the Governor-General makes an Order in Council to that effect” and substituting “a date appointed by the Governor-General by Order in Council”.
 - (5) Section 2A(9) is amended by omitting “1 January 2011 if the Governor-General makes an Order in Council to that effect” and substituting “a date appointed by the Governor-General by Order in Council”. 5
 - (6) Section 2A is amended by repealing subsection (10) and substituting the following subsection: 10
 - “(10) Subject to **section 2C(1)**, if the Governor-General makes an Order in Council under subsection (8), then subsection (5) and subpart 1 of Part 5 of Schedule 3 are repealed.”
 - (7) Section 2A is amended by repealing subsection (11) and substituting the following subsection: 15
 - “(11) Subject to **section 2C(1)**, if the Governor-General makes an Order in Council under subsection (9), then subsection (6) and subpart 3 of Part 5 of Schedule 3 are repealed.”
 - (8) Section 2A(12), (13), and (15) to (19) are repealed.
- 5 New sections 2B and 2C inserted** 20
- The following sections are inserted after section 2A:
- “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— 25
- “(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 prior to the date appointed in the Order in Council; and 30
- “(d) not appoint a date earlier than 1 January 2013.
- “(2) An Order in Council made under section 2A(8) or (9) may—
- “(a) provide that subpart 2 or 4 of Part 5 of Schedule 3, as the case may be, applies— 35
- “(i) generally to all persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3; or

- “(ii) 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:
- “(b) amend an Order in Council previously made under section 2A(8) or (9) to apply subpart 2 or 4 of Part 5 of Schedule 3 to any other class of persons carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3. 5
- “(3) Before recommending the making of an Order in Council under section 2A(8) or (9) or the amendment of an Order in Council made under one of those sections, the Minister must have regard to— 10
- “(a) the need for the chief executive responsible for the administration of Parts 4 and 5 of this Act to be able to verify information contained in emissions returns of the persons who will become participants in respect of the activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and 15
- “(b) the likelihood that, as the result of becoming participants because of the order, persons carrying out the activities listed in subpart 2 or 4 of Part 5 of Schedule 3 will reduce their emissions; and 20
- “(c) the desirability of minimising the compliance and administration costs of persons who will become participants in respect of the activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order. 25
- “(4) An Order in Council referred to in **subsection (2)(b)** must comply with **subsection (1)**.
- “2C **Effect of Orders in Council in relation to Part 5 of Schedule 3**
- “(1) If an Order in Council, including any Order in Council amending an earlier Order in Council, is made under— 30
- “(a) section 2A(8), then the provisions that are repealed by operation of **section 2A(10)** are repealed from the date on and after which all participants in respect of the activity listed in subpart 2 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity: 35

- “(b) section 2A(9), then the provisions that are repealed by operation of **section 2A(11)** are repealed from the date on and after which all participants in respect of the activity listed in subpart 4 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity. 5
- “(2) Despite section 163(4)(c), regulations made under section 163 may cover emissions in respect of an activity listed in Part 5 of Schedule 3 in respect of which another person carrying out an activity listed in that Part is required to surrender units, provided that not more than 1 participant is required to surrender units in relation to the same emissions. 10
- “(3) Despite anything in this Act,—
- “(a) section 54(4) applies, with any necessary modifications, to a person who was a participant in respect of an activity listed in subpart 1 or 3 of Part 5 of Schedule 3 if that subpart is repealed by operation of **section 2A(10) or (11)**: 15
- “(b) a person who has ceased to be a participant in respect of an activity listed in subpart 1 or 3 of Part 5 of Schedule 3 because that subpart is repealed by operation of **section 2A(10) or (11)** is not required to comply with section 59, but the chief executive may, for the purposes of section 59(2), be satisfied that the person has, for the purposes of that section, ceased to carry out the activity.” 20 25

6 Interpretation

- (1) The definition of **allocation plan** in section 4(1) is amended by omitting “section 79 or 80” and substituting “**section 71**”. 30
- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order: 30
- “**animal welfare export certificate** means an animal welfare export certificate issued under section 46 of the Animal Welfare Act 1999
- “**Crown holding account**— 35
- “(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; but

- “(b) does not include a holding account opened by any other person on behalf of the Crown under section 18A
- “**solid biofuel** means wood, wood waste, sulphate lyes, charcoal, or any other solid fuel derived from biomass”.
- (3) The definition of **chief executive** in section 4(1) is amended 5
by inserting “or subpart” after “Part” in each place where it appears.
- (4) Section 4(1) is amended by repealing the definition of **Convention** and substituting the following definition:
- “**Convention**— 10
- “(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 15
are, or will become, binding on New Zealand from time to time”.
- (5) Section 4(1) is amended by repealing the definition of **draft allocation plan**.
- (6) Paragraph (a) of the definition of **forest land** in section 4(1) is 20
amended by omitting “when the forest species reach maturity”.
- (7) Paragraph (c)(i) of the definition of **forest land** in section 4(1) is amended by omitting “at maturity”.
- (8) Paragraph (c)(ii) of the definition of **forest land** in section 4(1) is amended by omitting “at maturity”. 25
- (9) Paragraph (b) of the definition of **post-1989 forest land** in section 4(1) is amended by omitting “between 1 January 1990 and 31 December 2007” and substituting “in the period beginning on 1 January 1990 and ending on 31 December 2007”.
- (10) Section 4(1) is amended by repealing the definition of **Protocol** and substituting the following definition: 30
- “**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 35
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”.
- (11) The definition of **waste** in section 4(1) is amended by adding 5
“; but” and also by adding the following paragraph:
“(c) does not include any solid biofuel combusted for the purpose of generating electricity or industrial heat”.
- (12) Section 4 is amended by repealing subsection (5) and substituting the following subsection:
- “(5) Despite anything in this Act, a hectare of land is not to be 10
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 15
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 it has not 20
received an allocation in accordance with the pre-1990 forest land allocation plan issued under **section 71**.”
- 7 Minister of Finance may carry out trading activities with respect to units**
- (1) The heading to section 6 is amended by inserting “**direct Registrar regarding establishment of Crown holding accounts and**” after “**may**”. 25
- (2) Section 6(a) is amended by inserting “Crown” after “or close”.
- 8 New section 17A inserted**
- The following section is inserted after section 17: 30
- “17A Power of Registrar to delegate**
- “(1) The Registrar may, in writing, delegate to any person who is employed under the State Sector Act 1988 or Crown Entities Act 2004 all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of 35
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. 5
- “(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. 10
- “(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. 15
- “(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.” 20

9 Closing holding accounts

Section 18B is amended by adding the following subsection:

- “(7) The Registrar must give effect to any directions given by the chief executive under subsection (2) in accordance with, and subject to, the procedures set out in this subpart and any regulations made under section 30G.” 25

10 Trusts, representatives, and assignees of bankrupts

Section 18E is amended by adding the following subsection:

- “(4) Despite anything in subsection (1), the Registrar may open a holding account in the name of a trust if the trust is treated under **section 157** as an unincorporated body and has notified the chief executive that it is a participant under section 56 or has applied to be registered as a participant under section 57.” 30

11 Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land

Section 30F is amended by repealing subsections (1) and (2) and substituting the following subsection:

- “(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 71**.”

12 Regulations

Section 50 is amended by adding the following subsection:

- “(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.”

13 Participants

- (1) Section 54(1)(a)(i) and (2) is amended by omitting “180 or 204” in each place where it appears and substituting in each case “180, 204, and 213”.
- (2) Section 54(4) is amended by inserting “(including, but not limited to, the obligation to retain records in accordance with section 67)” after “obligations”.

14 Associated persons

Section 55(3)(b)(ii) is amended by omitting “a person engaged in a joint activity” and substituting “member of an unincorporated body as defined in **section 157(7)**”.

15 Applications to be registered as participant in respect of activities listed in Schedule 4

- (1) Section 57(4) is amended by adding “; and” and also by adding the following paragraph:

“(c) has paid any prescribed fees or charges.” 5

- (2) Section 57(6)(b) is amended by omitting “209(2)(a), or 213(2)(a)” and substituting “, or 209(2)(a)”.

- (3) Section 57(7) is amended by omitting “4, or 5” and substituting “or 4”.

- (4) Section 57(8) is amended by omitting “209(2)(b), or 213(2)(b)” and substituting “or 209(2)(b)”.

16 Removal from register of participants in respect of activities listed in Schedule 4

- (1) Section 58(3)(c) is amended by omitting “209(3)(a), or 213(3)(a)” and substituting “or 209(3)(a)”.

15

- (2) Section 58(4) is amended by omitting “209(3)(b), or 213(3)(b)” and substituting “or 209(3)(b)”.

17 Removal from register of participants in respect of activities listed in Schedules 3 and 4

- (1) Section 59(2)(b) is amended by omitting “209(3)(a), or 213(3)(a)” and substituting “or 209(3)(a)”.

20

- (2) Section 59(3) is amended by omitting “, 211, and 215” and substituting “and 211”.

18 Exemptions in respect of activities listed in Schedule 3

Section 60(2)(b) is amended by omitting “of not” and substituting “of”. 25

19 New section 61 substituted

Section 61 is repealed and the following section substituted:

“61 Requirement to have holding accounts

- “(1) A participant or an eligible person under **subpart 2 of Part 4** must have a holding account for the purpose of— 30

“(a) surrendering units as required under this Part and Part 5; and

- “(b) receiving New Zealand units to which the participant or eligible person becomes 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. 5
- “(3) Despite anything in this Act, the Registrar must, subject to section 18A(5), open a holding account in the name of— 10
- “(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 (as defined in subpart 2 of Part 4) who is entitled to make an application under section 78 or **86A** in respect of an allocation of units.” 15

20 Entitlement to receive New Zealand units for removal activities

Section 64 is amended by adding the following subsection: 20

- “(6) A direction given by the Minister of Finance under this section is not a direction for the purposes of section 6 or 7 and the Minister of Finance is not required to publish it under section 8A.”

21 Annual emissions returns 25

- (1) Section 65(2)(e) is amended by omitting “fee” and substituting “fees or charges”.
- (2) Section 65(4) is amended by omitting “30 April” and substituting “31 May”.

22 New subpart 2 of Part 4 substituted 30

Subpart 2 of Part 4 is repealed and the following subpart substituted:

“Subpart 2—Issuance and allocation of New
Zealand units

“68 **Interpretation**

In this subpart, unless the context otherwise requires,—

“**allocate**, in relation to New Zealand units,— 5

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

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

“**allocative baseline**, in relation to an eligible activity, means the prescribed allocative baseline for the eligible activity 10

“**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 15

“**eligible industrial activity** means an activity specified as an eligible industrial activity in regulations made under **section 161A** 20

“**eligible land** means pre-1990 forest land other than land that has been—

“(a) declared to be exempt land under section 183 or 184; or

“(b) deforested where the area deforested is less than 2 hectares and for which no obligation to surrender units for deforesting the land was incurred 25

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

“**existing determination** means an existing— 30

“(a) determination; or

“(b) new determination

“**fishing allocation plan** means the allocation plan that provides for the matters specified in **section 75**

“**pre-1990 forest land allocation plan** means the allocation plan that provides for the matters specified in **section 73** 35

“**provisional allocation** means the initial allocation made under **section 82**

“**specified year** means,—

- “(a) in relation to an eligible agricultural activity, the year immediately preceding a year in which a person applies to be allocated New Zealand units under **section 86A**; and 5
- “(b) in relation to an eligible industrial activity, the year in which a person applies to be allocated New Zealand units under **section 86A**. 10

“**69 Issuance of 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 with the Minister of Finance; and 15
- “(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 20
 - “(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 25
 - “(iv) any other matters that the Minister considers relevant; and
- “(c) if the direction under **subsection (1)** relates to the issuance of New Zealand units into a Crown holding account 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: 30
 - “(i) New Zealand’s annual emissions for the 5 years (on record) prior to the year of the direction under consideration; and 35

- “(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. 5
 - “(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— 10
 - “(a) publish a copy of the direction in the *Gazette*; and
 - “(b) ensure that the determination is accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - “(c) present a copy of the direction to the House of Representatives. 15
 - “(5) The copies of the direction under **subsection (4)** must be accompanied by a statement setting out how the Minister has had regard to the matters specified in **subsection (2)(b) and (c)**. 20
- “70 Notification of intention regarding New Zealand units**
- “(1) The Minister must recommend that the Governor-General make an Order in Council notifying the Crown’s intentions to issue and sell or allocate free of charge New Zealand units at least 9 months before the end of each of the following periods: 25
 - “(a) the first commitment period and each subsequent commitment period (if any); and
 - “(b) if there is no subsequent commitment period,—
 - “(i) the 5-year period commencing on 1 January 2013; or 30
 - “(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**.
 - “(2) The notification contained in the Order in Council made under **subsection (1)** must include—
 - “(a) the number of New Zealand units that will be issued under **section 69**; and 35
 - “(b) the time frames for issuance of New Zealand units under **section 69**; and

- “(c) the intended time frame for any allocation of New Zealand units free of charge, 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)** to the House of Representatives before an Order in Council may be made under this section. 5
- “(4) The Minister must make a copy of any Order in Council made under **subsection (1)** accessible via the Internet site of the department of the chief executive responsible for the administration of this Act. 10
- “(5) The Crown is not bound by the notification contained in any Order in Council made under **subsection (1)** to make any decisions in relation to the issuance, sale, or allocation free of charge of New Zealand units.
- “*Allocation of New Zealand units in relation to pre-1990 forest land and fishing* 15
- “**71 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 73 or 75**. 20
- “(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 77(5)** and any of the Minister’s decisions on the recommendations contained in the report. 25
- “(3) An allocation plan comes into force on the day after the date it is presented to the House of Representatives. 30
- “(4) An allocation plan or amended allocation plan is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and for the purposes of the Acts and Regulations Publication Act 1989. 35

“72 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 76 or 77**, recommend that the Governor-General revoke that allocation plan and replace it with an amended allocation plan. 5
- “(2) An amended allocation plan comes into force at the time it is issued.
- “(3) **Section 71(2)(b) and (3)** do not apply to an amended allocation plan. 10

“73 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 71** in respect of pre-1990 forest land.
- “(2) The pre-1990 forest land allocation plan must provide for— 15
- “(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 74** to hold any New Zealand units allocated in respect of the eligible land covered in **paragraph (b)(i)(A)**; and 20
- “(b) an allocation of New Zealand units free of charge, being—
- “(i) 18 New Zealand units for each hectare of eligible land that was Crown forest licence land on 1 January 2008 and— 25
- “(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; 30
- 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: 35
- “(ii) 39 New Zealand units for each hectare of eligible land, other than land covered by **subpara-**

- graph (i)** that was transferred to the landowner, or former landowner, of the land—
- “(A) after 31 October 2002; or
- “(B) prior to 1 November 2002 if, since that date, ownership of any body corporate 5
owning the land 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)**. 10
- “(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)** 15
receives—
- “(i) 7 units for each hectare of eligible land on or before 31 December 2012; and
- “(ii) 11 units for each hectare of eligible land after 31 December 2012; and 20
- “(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 on or before 31 December 2012; and 25
- “(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— 30
- “(i) 23 units for each hectare of eligible land on or before 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— 35
- “(a) must also specify the manner in which, and the extent to which, the ownership of any body corporate own-

- ing eligible land must have changed for the purposes of **subsection (2)(b)(ii)(B)**; and
- “(b) must specify—
- “(i) 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; and
- “(B) enable the Minister to verify that the person received the correct allocation of New Zealand units under the allocation plan; and
- “(ii) in relation to an eligible person who receives an allocation of New Zealand units,—
- “(A) the records, or the kind 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.
- “(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 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)**, transfer does not include transmission, unless the allocation plan specifies otherwise, for example, in relation to any land vested under an Act.

“74 Minister to appoint person to hold certain New Zealand units

“(1) The Minister must, prior to making a determination in respect of eligible land covered by **section 73(2)(b)(i)(A)**, by notice in the *Gazette*,—

5

“(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

10

“(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.

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“(2) If the Minister has not appointed a person in accordance with **subsection (1)** prior to issuing a notice under **section 78(1)** inviting persons to apply for an allocation of New Zealand units under an allocation plan providing for the matters in **section 73**, then the Minister must, by notice in the *Gazette*, appoint a person to apply for an allocation of New Zealand units in respect of the land covered by **section 73(2)(b)(i)(A)** on behalf of the person to be appointed under **subsection (1)**.

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“75 Allocation to owners of fishing quota

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“(1) The Minister must recommend to the Governor-General that an allocation plan be issued under **section 71** in relation to fishing.

“(2) The fishing allocation plan must provide for—

“(a) an allocation of New Zealand units to persons who—

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“(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

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“(b) a total of 700 000 New Zealand units to be available for allocation under the allocation plan; and

- “(c) the persons defined in **subsection (2)(a)** to receive an allocation calculated in accordance with the following formula:

$$P = A \times (B + C)/(D + E)$$

where—

5

P is the number of New Zealand units the person is entitled to receive

A is 700 000 New Zealand units

B is the total quota weight equivalent (expressed in kilograms) owned by each quota owner of stocks other than Foveaux Strait dredge oysters on 24 September 2009

10

C is the total quota weight equivalent (expressed as a number of oysters) owned by each quota owner of the Foveaux Strait dredge oyster stock divided by 9.8 on 24 September 2009

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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 24 September 2009

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E is the sum of the total allowable commercial catch (expressed as a number of oysters) of the Foveaux Strait dredge oyster stock divided 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 24 September 2009; and

25

- “(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—

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“(i) receive an allocation of New Zealand units; and

“(ii) enable the Minister to verify that the person received the correct allocation of New Zealand units free of charge under the allocation plan; and

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- “(e) in relation to an eligible person who receives an allocation of New Zealand units,—
 - “(i) the records, or the kind of records, that the person must retain; and
 - “(ii) the form in which the person must retain the records; and 5
 - “(iii) the period for which the person must retain the records; and
 - “(f) the policies, procedures, and provisions to be applied by the Minister under the allocation plan. 10
 - “(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.
- “76 **Consultation on pre-1990 forest land allocation plan**
- “(1) Before making a recommendation under **section 73**, 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. 15
 - “(2) A failure to comply with this section does not affect the validity of any pre-1990 forest land allocation plan issued under **section 71**. 20
 - “(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. 25
- “77 **Consultation on fishing allocation plan**
- “(1) Before making a recommendation under **section 75**, the Minister must prepare a draft fishing allocation plan.
 - “(2) The draft fishing allocation plan must provide for the matters set out in **section 75(2)**. 30
 - “(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 respon- 35

sible 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 5

“(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). 10

“(5) If any submission is made on the draft allocation plan under **subsection (4)**, the chief executive responsible for the administration of this Act must, after the expiry of the time for making submissions, prepare for the Minister a report that contains recommendations in respect of the submissions. 15

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

“(1) As soon as practicable after an allocation plan is issued, 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. 20

“(2) The notice under **subsection (1)** must specify—

“(a) the 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 the 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 the fishing allocation plan, be no earlier than 20 working days after the date on which the notice is given); and 25 30

“(b) 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 data and other information must be that specified in the allocation plan); and 35

“(c) how the data and other information are to be supplied.

“(3) To avoid doubt, data and information supplied under **subsection (2)** is 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 and supplies the required data and other information in the required format; and 5
- “(b) the Minister is not required to make a determination in favour of any person who fails to apply for an allocation under an allocation plan before the date specified in the notice.
- “(5) Following the expiry of the date by which applications must be received, the Minister must, in relation to each application received by that date, make a preliminary determination in accordance with the allocation plan as to— 10
- “(a) whether the person is eligible to receive an allocation of New Zealand units under the plan; and 15
- “(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. 20
- “(6) After making a preliminary determination in relation to an application under **subsection (5)**, the Minister must notify the applicant of the following:
- “(a) whether, in the Minister’s view, the person is an eligible person, and— 25
- “(i) if so, the total number of New Zealand units the Minister has determined the person is entitled to receive under the plan; and
- “(ii) if not, the reasons for that view; and
- “(b) that, if the applicant identifies 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 30
- “(c) the date by which any further information must be received by the Minister (which must, in the case of the 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 the fishing allocation plan, be 35

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 applicant’s allocation of New Zealand units (if any) under the allocation plan. 5
- “(8) As soon as practicable after making a final determination under **subsection (7)**, the Minister must—
- “(a) publish the determination in the *Gazette*; and 10
 - “(b) ensure that the determination is accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - “(c) direct the Registrar to transfer the allocated New Zealand units to the holding account of the person in accordance with the determination. 15

“79 New determination made in accordance with allocation plan

- “(1) Despite anything in this Act, the Minister may (but is not required to) reconsider, revoke, and replace a determination if— 20
- “(a) the allocation plan under which the determination was made is amended or revoked; or
 - “(b) the determination has resulted, or will result, in a person receiving an incorrect allocation owing to—
 - “(i) an error in the application of the criteria specified in the applicable allocation plan; or 25
 - “(ii) the person providing altered, false, incomplete, or misleading information in response to a notice given under **section 78(1) or (6)**; or
 - “(c) a person who is not specified as an eligible person under a determination has— 30
 - “(i) reasonable grounds to believe that he or she is an eligible person; and
 - “(ii) applied to the Minister for an allocation in accordance with the applicable allocation plan. 35
- “(2) In making a new determination, the Minister must,—
- “(a) if the Minister considers that he or she has sufficient information to make the new determination of the mat-

- ters specified in **section 78(5)**, comply with **subsection (4)**; or
- “(b) if the Minister considers that he or she does not have sufficient information to make the new determination of the matters specified in **section 78(5)**, follow the process in **section 78**, except that the reference to—
- “(i) 40 working days in the case of the pre-1990 forest land allocation plan and 20 working days in the case of the fishing allocation plan in **section 78(2)(a)** must be read as 20 working days and 10 working days, respectively; and
- “(ii) 20 working days in the case of the pre-1990 forest land allocation plan and 10 working days in the case of the fishing allocation plan in **section 78(6)(c)** must be read as 10 working days and 5 working days, respectively.
- “(3) If **subsection (2)(a)** applies, the Minister must—
- “(a) give notice of the matters specified in **section 78(5)** to the following persons:
- “(i) any eligible person under a final determination who would, once a new determination replaces the final determination, receive greater or fewer New Zealand units than if a new determination did not replace a determination; and
- “(ii) any person not specified as an eligible person under a determination who is specified as an eligible person under a new determination; and
- “(b) comply with **section 78(7) and (8)** as if the notice given under **paragraph (a)** had been given under **section 78(6)**.
- “(4) If the Minister has provided notice of the matters specified in **section 78(5)** in accordance with **subsection (3)**, the reference in **section 78(6)(c)** to 20 working days in the case of the pre-1990 forest land allocation plan and 10 working days in the case of the fishing allocation plan must be read as 10 working days and 5 working days, respectively.
- “(5) A new determination made in accordance with **subsection (2)**—

- “(a) may specify 1 or more of the matters specified in **section 78(5)**, and may do 1 or more of the following:
- “(i) specify the correct allocation of a person whose allocation is specified incorrectly in a final determination: 5
 - “(ii) specify as an eligible person a person who was not specified as an eligible person in a final determination: 10
 - “(iii) not specify as an eligible person a person who was specified as an eligible person in a final determination but is no longer an eligible person; and
- “(b) applies subject to **section 80**.
- “(6) Despite anything in this section, the Minister may make a new determination that corrects any minor mistakes or defects in an existing determination without complying with **section 78(1) to (6)**. 15
- “80 Effect of new determination**
- “(1) If the Minister makes a new determination in accordance with **section 79**,— 20
- “(a) the new determination has the effect of immediately revoking and replacing the final determination; and
 - “(b) the Minister may, if practicable, amend or revoke any direction given under **section 78(8)(c)** in order to give effect to the new determination. 25
- “(2) A new determination made in accordance with **section 79** applies from the date it is made, and, subject to **subsections (5) and (6)**, does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with a revoked determination before that date. 30
- “(3) If a revoked determination incorrectly specified a person’s allocation, a new determination may increase or decrease the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person— 35
- “(a) received under the revoked determination; and
 - “(b) would have received if the revoked determination had specified the person’s correct allocation.

- “(4) If the circumstances of a person specified as an eligible person under a revoked determination changed while that determination was in force, and the person received a greater or smaller number of New Zealand units than the person’s entitlement as a result, then a new determination may increase or decrease 5 the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person—
- “(a) received under the revoked determination; and
- “(b) should have received, given the person’s change in cir- 10 cumstances.
- “(5) If a person specified as an eligible person under a revoked determination is not specified as an eligible person under a new determination, but the person received a greater or smaller number of New Zealand units than they were entitled to under 15 the revoked determination, then,—
- “(a) if the person received too few New Zealand units, the new determination may specify that the person is to receive a further allocation of New Zealand units equal to the difference between the number of New Zealand 20 units the person received under the revoked determination and the number of New Zealand units that the person would have received if the revoked determination had specified the person’s correct allocation; or
- “(b) if the person received too many New Zealand units, the 25 chief executive may give a notice to the person, under section 125(1), specifying the number of New Zealand units the person received that the person was not entitled to, and requiring the person to transfer that number of New Zealand units in accordance with section 125(2). 30
- “(6) If a new determination shows that a person received more New Zealand units than the person was entitled to receive under a revoked determination, and the person’s incorrect allocation was due to the person providing altered, false, incomplete, or misleading information in response to a notice issued under 35 **section 78(1) or (6)**, then the chief executive may give a notice to the person under section 125(1)—
- “(a) specifying the number of New Zealand units the person received that the person was not entitled to; and

“(b) requiring the person to repay that number of New Zealand units in accordance with section 125(2).

*“Allocation of New Zealand units in relation to
industry and agriculture*

“81 Criteria for allocation of New Zealand units to industry 5

“(1) A person is eligible for an allocation of New Zealand units for an eligible industrial activity in respect of a specified year if the person carries out the activity at any time in the specified year.

“(2) **Subsection (1)** is subject to **section 161B(7)**. 10

“82 Provisional allocations for persons carrying out eligible industrial activities

“(1) A person who carries out an eligible industrial activity in a specified year is entitled to a provisional allocation of New Zealand units calculated in accordance with the following formula: 15

$$PA = LA \times AB \times OSY$$

where—

PA is the person’s provisional allocation of New Zealand units for the specified year 20

LA is the level of assistance for the activity for the specified year, being,—

(a) for a moderately emissions-intensive eligible industrial activity,—

(i) 0.6 in 2010, 2011, and 2012; and 25

(ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a moderately emissions-intensive eligible industrial activity) (expressed to 2 decimal places): 30

(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 1.3% (the phase-out rate for a highly emissions- 35

intensive eligible industrial activity) (expressed to 2 decimal places)

AB is the prescribed allocative baseline for the eligible industrial activity

OSY is the person's output from the eligible industrial activity in the year immediately preceding the specified year, as determined in accordance with regulations made under this Act. 5

“(2) This section is subject to **sections 85A and 86B**.

“**83 Annual reconciliation mechanism** 10

“(1) A provisional allocation in respect of an eligible industrial activity in a specified year is subject to—

“(a) an annual allocation adjustment; or

“(b) if the person ceases to carry out the eligible industrial activity during the specified year, a closing allocation adjustment at the time the person ceases to carry out the activity. 15

“(2) An annual allocation adjustment must be calculated in accordance with **section 84**.

“(3) A closing allocation adjustment must be calculated in accordance with **section 85**. 20

“**84 Annual allocation adjustment**

“(1) A person who has received a provisional allocation of New Zealand units in respect of an eligible industrial activity in a specified year must, subject to **section 85**, calculate the person's final allocation entitlement for the specified year in accordance with the following formula: 25

$$FA = LA \times AB \times OSY$$

where—

FA is the person's final allocation entitlement for the specified year 30

LA is the figure used for LA (level of assistance) when the person calculated a provisional allocation for the specified year

- AB is the figure used for AB (prescribed allocative baseline) when the person calculated a provisional allocation for the specified year
- OSY is the person's output from the eligible industrial activity in the specified year, as determined in accordance with regulations made under this Act. 5
- “(2) The person must then calculate the person's annual allocation adjustment in accordance with the following formula:
- $$AA = PA - FA$$
- where— 10
- AA is the person's annual allocation adjustment of units
- PA is the person's provisional allocation made under **section 82**
- FA is the person's final allocation entitlement calculated under **subsection (1)**. 15
- “(3) If, under **subsection (2)**,—
- “(a) AA is a negative number, the person is entitled to be allocated the difference between PA and FA in the annual allocation adjustment in accordance with **subsection (4) and section 86B(2)(b)**: 20
- “(b) AA is a positive number, the person must repay the difference between PA and FA in the annual allocation adjustment in accordance with **subsection (5)**.
- “(4) In the case of a person who is entitled to be allocated the number of units in the annual allocation adjustment calculated in accordance with **subsection (2)**, the following provisions apply: 25
- “(a) if the person makes an application for a provisional allocation in the year following the year to which the annual allocation adjustment relates, the person must record the adjustment in the person's application for a provisional allocation for the following year: 30
- “(b) if the person does not make an application for a provisional allocation in the year following the year to which the annual allocation adjustment relates,— 35
- “(i) the person must notify the chief executive by 30 April in the year following the year to which the annual allocation adjustment relates that the

- person is entitled to be allocated the number of units in the annual allocation adjustment; and
- “(ii) by 31 May in the year following the year to which the annual allocation adjustment relates, the chief executive must direct the Registrar to transfer to the holding account notified in the person’s application the number of units notified under **sub-paragraph (i)**. 5
- “(5) If a person is required to repay the number of units in an annual allocation adjustment, the following provisions apply: 10
- “(a) if the person makes an application for a provisional allocation in the year following the year to which the annual allocation adjustment relates,—
- “(i) the person must record the adjustment for the specified year in the person’s application; and 15
- “(ii) the chief executive 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, by 31 May in the year following the year to which the annual allocation adjustment relates, repay the shortfall by transferring the units to a Crown holding account designated by the chief executive; or 20 25
- “(b) if the person does not make an application for a provisional allocation for the year following the year to which the annual allocation adjustment relates, the person must—
- “(i) by 30 April in the year following the year to which the annual allocation adjustment relates, notify the chief executive of the person’s annual allocation adjustment; and 30
- “(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 chief executive. 35

- “(6) Units repaid by a person under **subsection (5)(a)(ii) or (b)(ii) or section 85(1)(d)(ii)** must be of a type that may be transferred to a surrender account at the time the units are repaid.

“85 Closing allocation adjustment

- “(1) If a person who has received a provisional allocation in a specified year ceases during the specified year to carry out the eligible industrial activity in respect of which the provisional allocation was made, the person must, within 20 working days of ceasing to carry out the activity,—
- “(a) calculate the person’s final allocation entitlement for the year in accordance with the formula in **section 84(1)**; and
- “(b) using the formula in **section 84(2)**, calculate the person’s closing allocation adjustment; and, for this purpose, **section 84(2)** applies with any necessary modifications as if the closing allocation adjustment was an annual allocation adjustment; and
- “(c) notify the closing allocation adjustment to the chief executive; and
- “(d) either,—
- “(i) if the closing allocation adjustment is a negative number, notify the chief executive that the person is entitled to be allocated the difference between PA and FA in the closing allocation adjustment; or
- “(ii) if the closing allocation adjustment is a positive number, notify the chief executive of the person’s closing allocation adjustment and repay the difference between PA and FA in the closing allocation adjustment by transferring the units to a Crown holding account designated by the chief executive.
- “(2) The chief executive may, at any time,—
- “(a) require a person who the Minister reasonably believes has ceased to carry out an eligible activity to make the calculations specified in **section 84**; or

“(b) waive requirements that a person has under **subsection (1)** if, in the chief executive’s opinion, it is reasonable to do so.

“(3) **Subsection (1)** is subject to **subsection (2)(b)**.

“**85A Allocations to new entrants commencing carrying out an eligible industrial activity** 5

“(1) This section applies to a person who carries out an eligible industrial activity at any time in a specified year, but did not carry out that activity during the year immediately preceding that year. 10

“(2) A person to whom this section applies is not entitled to a provisional allocation in respect of the specified year but may instead apply under **section 86A** for an allocation in respect of the specified year in the year immediately following the specified year, and in that case the person’s allocation for the specified year must be calculated in accordance with the following formula: 15

$$FA = LA \times AB \times OSY$$

where—

FA is the person’s final allocation entitlement for the specified year 20

LA is the level of assistance for the activity for the specified year, being,—

(a) for a moderately emissions-intensive eligible industrial activity,— 25

- (i) 0.6 in 2010, 2011, and 2012; and
- (ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a moderately emissions-intensive eligible industrial activity) 30
(expressed to 2 decimal places):

(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 1.3% 35
(the phase-out rate for a highly emissions-

- intensive eligible industrial activity) (ex-
pressed to 2 decimal places)
- AB is the prescribed allocative baseline for the eligible industrial activity
- OSY is the person's output from the eligible industrial activity for the specified year, as determined in accordance with regulations made under this Act. 5
- “86 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 specified year if the person carries out the activity at any time in the specified year. 10
- “(2) A person who carries out an eligible agricultural activity in a specified year is entitled to an allocation calculated in accordance with the following formula: 15
- $$A = LA \times AB \times OSY$$
- where—
- A is the person's allocation entitlement for the specified year
- LA is the level of assistance, being,— 20
- (a) 0.9 in 2015; and
- (b) in each year after 2015, the level of assistance from the previous year less 1.3% (the phase-out rate for an eligible agricultural activity) (expressed to 2 decimal places) 25
- AB is the prescribed allocative baseline for the eligible agricultural activity
- OSY is the person's output from the eligible agricultural activity in the specified year as determined in accordance with regulations made under this Act. 30
- “(3) A person who ceases to carry out the eligible agricultural activity in a year may, within 20 working days of ceasing to carry out the activity, apply under **section 86A** for an allocation for that year using the formula in **subsection (2)**, and that subsection applies with all the necessary modifications as if OSY 35
were the person's output for that year and not the specified year.

“86A 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 in respect of a specified year under this subpart must apply to the chief executive for the allocation. 5
- “(2) An application under **subsection (1)** must—
- “(a) be in the prescribed form; and
 - “(b) be accompanied by—
 - “(i) either—
 - “(A) in the case of an eligible industrial activity, the person’s provisional allocation, final allocation, and annual allocation adjustment, calculated (as applicable) under **sections 82, 84, 85, and 85A**; or 10
 - “(B) in the case of an eligible agricultural activity, the person’s allocation calculated under **section 86**; and 15
 - “(ii) any other information that the chief executive may require; and 20
 - “(iii) the prescribed fees or charges (if any); and
 - “(c) contain the person’s holding account number; and
 - “(d) be submitted no later than—
 - “(i) 31 December in the year following the specified year, if the application relates to an eligible agricultural activity, unless this subpart otherwise provides; and 25
 - “(ii) 30 April in the specified year, if the application relates to an eligible industrial activity; and
 - “(e) if the application relates to an allocation in respect of an eligible industrial activity, be accompanied by a statement as to whether a decision has been made, or whether the applicant is considering making a decision, to cease to carry out the activity in the specified year. 30
- “(3) **Subsection (4)** applies if and to the extent that any 2 or more persons are jointly carrying out the eligible activity including (but not limited to) in partnership, under an unincorporated joint venture, as trustees of a trust or through joint ownership of land, or an unincorporated association. 35

- “(4) If this subsection applies,—
- “(a) the persons who jointly carry out the eligible activity—
 - “(i) are to be treated as persons who comprise a joint person in relation to the allocation of New Zealand units in respect of the eligible activity; 5
 - and
 - “(ii) may not apply individually for an allocation of New Zealand units in respect of the eligible activity; and
 - “(b) the joint person may make a single application for an allocation of New Zealand units under **subsection (1)**; and 10
 - “(c) the application submitted by a joint person must comply with the requirements in **subsection (2)**, except that—
 - “(i) instead of complying with the requirement in **subsection (2)(c)**, the application must contain the number of a holding account in the name of the joint person; and 15
 - “(ii) the application must also contain—
 - “(A) the names and contact details of each of the persons who jointly carry out the eligible activity; and 20
 - “(B) the name and contact details of the person to whom notices are to be given under this Act; and 25
 - “(d) each person who comprises a joint person is, in respect of the period during which the person jointly carries out or carried out the eligible activity,—
 - “(i) jointly and severally liable for the obligations of the joint person; and 30
 - “(ii) jointly entitled to the benefits of the joint person; and
 - “(e) if this Act requires any thing to be done by or on behalf of the joint person,—
 - “(i) it is the joint and several liability of all the persons who comprise the joint person to do the thing; and 35

- “(ii) any such thing done by 1 person who comprises the joint person is sufficient compliance with the requirement; and
- “(f) a notice that is addressed to a joint person and given in accordance with this Act to the person nominated by the joint person in its application in accordance with **paragraph (c)(ii)(B)** is to be treated as notice given to that joint person and all the persons who comprise the joint person; and 5
- “(g) in this subsection— 10
- “**joint person** includes (but is not limited to) a partnership, an unincorporated joint venture, a trust, joint owners of land, or an unincorporated association (as applicable in the circumstances)
- “**person** means a partner, joint venturer, trustee, joint owner of land, or other person who comprises a joint person (as applicable in the circumstances). 15
- “86B Allocation of New Zealand units**
- “(1) On receipt of an application under **section 86A**, the chief executive must— 20
- “(a) decide whether the applicant is eligible to receive a provisional allocation or an allocation of New Zealand units for an eligible activity in respect of a specified year; and
- “(b) if the applicant is eligible, decide the number of units the applicant is entitled to be provisionally allocated or allocated; and 25
- “(c) if the application relates to an eligible industrial activity and in the chief executive’s opinion it is desirable to do so, adjust the amount of any provisional allocation to which the applicant would otherwise be entitled to take account of any statement under **section 86A(2)(e)** regarding any plans to cease carrying out the activity. 30
- “(2) If the chief executive decides under **subsection (1)** that an applicant is entitled to a provisional allocation or an allocation of New Zealand units in respect of a specified year, the chief executive must— 35

- “(a) notify the applicant of the number of units the applicant has been provisionally allocated or allocated in respect of the specified year and of 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)** plus or minus, as the case may be, in relation to an eligible industrial activity the number of units recorded in the application as the applicant’s annual allocation adjustment from the previous specified year. 5 10
- “(3) If the chief executive decides the applicant is not eligible to be allocated New Zealand units for an eligible activity in respect of a specified year, the chief executive must notify the applicant of— 15
 - “(a) the chief executive’s decision; and
 - “(b) the reasons for the decision; and
 - “(c) the person’s right under section 144 to seek a review of the allocation decision.
- “(4) Without limiting section 144, the chief executive may also vary or revoke an allocation decision made under this section if in the chief executive’s opinion the decision has resulted, or would otherwise result, in a person receiving an incorrect allocation because— 20
 - “(a) of an error in the calculation of the person’s entitlement to an allocation or provisional allocation under this subpart; or 25
 - “(b) the person has provided altered, false, incomplete, or misleading information in or with an application.
- “(5) The chief executive may not vary or revoke a decision under **subsection (4)** after the expiration of 4 years from the end of the specified year or other period in respect of which the allocation decision was made if the amendment would decrease the number of units allocated to the applicant. 30
- “(6) However, if the chief executive is satisfied that an application for an allocation or provisional allocation, or any other document submitted under this subpart, is fraudulent or wilfully misleading, the chief executive may vary or revoke the allocation decision at any time so as to decrease the number of units 35

allocated to the applicant (including decreasing that number to zero).

- “(7) If the chief executive varies or revokes an allocation decision under **subsection (4)**, the chief executive must, as soon as practicable after doing so, notify the applicant of— 5
- “(a) the particulars of the variation or revocation of the allocation decision; and
 - “(b) any grounds or information upon which the variation or revocation was based; and
 - “(c) the person’s right under section 144 to seek a review of the allocation decision. 10
- “(8) If the result of a review, variation, or revocation of an allocation decision under **subsection (4)** is that a person allocated units is found to have been allocated and transferred—
- “(a) too many units for an eligible activity in respect of a specified year or any part of a specified year, the person must within 90 working days after the date of the notice under **subsection (7)** repay the number of units notified to the person by transferring the units to a Crown holding account designated by the chief executive; or 15 20
 - “(b) too few units for an eligible activity in respect of a specified year or any part of a specified year, the chief executive must as soon as practicable after the date of the notice under **subsection (7)**, 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 25
- “(9) Units repaid by any person under **subsection (8)** must be of a type that may be transferred to a surrender account at the time the units are repaid. 30

“**86C Chief executive may require further information prior to allocating New Zealand units**

- “(1) For the purposes of any of **sections 78, 79, and 86B**, the chief executive may give to a person who has made an application for an allocation of New Zealand units under any of those sections a notice requiring the person to supply further information to the chief executive (regardless of whether the 35

decision or determination is to be made by the chief executive or the Minister).

- “(2) A notice under **subsection (1)** must be given before the decision or determination is made in respect of the application.
- “(3) The notice may require the information to be provided that 5
is necessary to determine whether a person is eligible for a provisional allocation or an allocation of New Zealand units, or eligible for the allocation that the person has applied for.
- “(4) A person who has received a notice under this section must supply the information requested within the time frame specified in the notice. 10
- “(5) A person who fails to comply with a notice under this section may not receive a provisional allocation or an allocation of New Zealand units.

“86D Retention of records and materials in relation to allocation 15

- “(1) A person who has been allocated or provisionally allocated New Zealand units in respect of an eligible activity must keep sufficient records to enable the chief executive to verify, in respect of any specified year in which the person applied for 20
an allocation,—
 - “(a) that the person was an eligible person; and
 - “(b) the person’s emissions (if applicable); and
 - “(c) the person’s calculations of the person’s entitlement to be allocated or provisionally allocated New Zealand 25
units; and
 - “(d) the person’s output from the eligible activity for the specified year, as determined in accordance with regulations made under this Act; and
 - “(e) any other prescribed information. 30
- “(2) The records specified in **subsection (1)**—
 - “(a) must include—
 - “(i) a copy of any application made to the chief executive under **section 86A**; and
 - “(ii) any information used to prepare the application; 35
and

- “(b) must be retained for a period of at least 7 years after the end of the specified year in respect of which the New Zealand units were allocated.

“**86E Balance of units at end of true-up period or other balance date**

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- “(1) By the end of the true-up period, the Minister must ensure that the Crown holds, in any Crown holding account in the Registry, or in any retirement or surrender account, a number of Kyoto units equal to the number of New Zealand units issued into a Crown holding account during the first commitment period, but not including New Zealand units that are, during the first commitment period,—

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- “(a) transferred to a conversion account in accordance with section 30E; or

- “(b) allocated to pre-1990 forest land owners under the pre-1990 forest land allocation plan that will be transferred after 31 December 2012 and that have not been transferred to a cancellation account; or

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- “(c) transferred to a cancellation account.

- “(2) **Subsection (3)** applies if New Zealand has received, or if the Minister expects New Zealand to receive, units under—

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- “(a) the Protocol during a subsequent commitment period; or

- “(b) a successor international agreement.

- “(3) If this subsection applies the Governor-General may, by Order in Council made on the recommendation of the Minister, specify a date by which the Crown must hold, in any Crown holding account in the Registry, or in any retirement or surrender account, a number of Kyoto units or approved overseas units received under any international agreement as calculated under **subsection (4)**.

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- “(4) The number of Kyoto or approved overseas units held in accordance with **subsection (3)** must be equal to the number of New Zealand units issued into a Crown holding account up to the date specified in the Order in Council but not including New Zealand units that up to the date specified in the order are—

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- “(a) transferred to a conversion account in accordance with section 30E; or
 - “(b) allocated to pre-1990 forest land owners under the pre-1990 forest land allocation plan that will be transferred after 31 December 2012 and that have not been transferred to a cancellation account; or 5
 - “(c) transferred to a cancellation account.
 - “(5) If an Order in Council is made under **subsection (3)**, the Minister must ensure that the Crown holds the required number of units by the date specified in the order. 10
 - “(6) For the purposes of **subsection (1)**, **true-up period** means the 100 days, beginning on a date determined by the Conference of the Parties (serving as the Meeting of the Parties to the Protocol), that provide the Parties with an additional period for fulfilment of their obligation under Article 3.1 of the Protocol 15 through the acquisition and transfer of Kyoto units.”
- 23 Chief executive to publish certain information**
- (1) Section 89(1)(e) is amended by omitting “subsection (3)” and substituting “subsections (3) and **(4)**”.
 - (2) Section 89 is amended by adding the following subsection: 20
 - “(4) The chief executive is only required to report the total quantity of emissions and the total quantity of removals in aggregate for the activities in Part 1 of Schedule 4.”
- 24 Matters in relation to which chief executive may decline to make emissions rulings** 25
- Section 108 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The chief executive may not make an emissions ruling—
 - “(a) with respect to a provision that authorises or requires the chief executive to— 30
 - “(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 35
 - “(b) if the information submitted with the application for the ruling, including (but not limited to) information

submitted under section 107(3), contains questions of fact that the chief executive would need to determine in order to make the ruling.”

25 Submission of final emissions returns

Section 118 is amended by adding the following subsection: 5

- “(6) Despite anything in subsection (3), a nominated entity must not submit an individual final emissions return in respect of a person who meets the conditions in that subsection if at the time of meeting those conditions the person is a member of a consolidated group.” 10

26 Power to extend date for emissions returns

Section 119(a) is amended by omitting “before” and substituting “by”.

27 Repayment of units by persons in case of error

Section 125(1) is amended by omitting “or other Crown account” and substituting “or other account held by the Crown”. 15

28 Strict liability offences

- (1) Section 129(1)(b)(iii) is amended by inserting “**or 86D**” after “section 67”.
(2) Section 129(1)(b) is amended by repealing subparagraph (v) 20 and substituting the following subparagraph:
“(v) fails to notify the chief executive, within the time required, of a matter required to be notified under **section 192(3)**.”

29 Other offences

Section 132(1)(e) is amended by inserting “**or 86D**” after “section 67”. 25

30 Evasion or similar offences

Section 133(1)(c) is amended by inserting “**or 86D**” after “section 67”.

31 Formation of consolidated group

(1) Section 150(6)(a) is amended by omitting “the following” and substituting “that”.

(2) Section 150(6)(b) is amended by omitting “year following the next year” and substituting “following year”. 5

(3) Section 150 is amended by inserting the following subsections after subsection (6):

“(6A) Despite anything in this Act, a person may, if the person wishes to be treated as a member of consolidated group from the date the person is registered as a participant, give notice 10 to the chief executive under subsection (3) at the same time as giving notice to the chief executive under section 56 or when submitting an application under section 57, as applicable.

“(6B) Despite anything in this Act, a person who gives notice to the chief executive in accordance with **subsection (6A)** is not 15 required to open a holding account in the person’s own name at the same time as giving notice to the chief executive under section 56 or when submitting an application under section 57, as applicable, as long as—

“(a) the notice under **subsection (6A)** is received by the 20 chief executive before 30 September in the year in which that notice is given; and

“(b) the nominated entity specified in the notice has, or has applied for, a holding account in the name of the consolidated group.” 25

32 Changes to consolidated groups

(1) Section 151 is amended by repealing subsection (4) and substituting the following subsection:

“(4) If a participant has elected under subsection (1) to join a consolidated group, that participant must be treated for the purposes of this Part or Part 5 as being a member of that consolidated group from the beginning of the year in which the participant gives notice to the chief executive under subsection (1).” 30

(2) Section 151 is amended by adding the following subsections: 35

“(6) Despite anything in this Act, a person may, if the person wishes to be treated as a member of an existing consolidated group

from the date the person is registered as a participant, give notice to the chief executive under subsection (1) at the same time as giving notice to the chief executive under section 56 or when submitting an application under section 57, as applicable.

5

- “(7) Despite anything in this Act, a person who gives notice to the chief executive in accordance with **subsection (6)** is not required to open a holding account in the person’s own name when giving notice to the chief executive under section 56 or when submitting an application under section 57, as applicable.”

10

33 Nominated entities

Section 152 is amended by adding the following subsection:

- “(5) To avoid doubt, an emissions return for a consolidated group or any member of a consolidated group may only be submitted by the nominated entity of the group.”

15

34 Effect of being member of consolidated group

- (1) Section 153(6) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) does not prevent the nominated entity submitting a quarterly emissions return under section 66 for other removal activities of the consolidated group; and”.

20

- (2) Section 153(6)(b) is amended by omitting the words “either of”.

35 Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4

25

- (1) Section 154(1) is amended by omitting “an activity” and substituting “1 or more of the activities”.

- (2) Section 154(1)(c) is amended by omitting “or 193”.

- (3) Section 154 is amended by adding the following subsection:

30

- “(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.”

36 Ceasing to be member of consolidated group

Section 155(2) is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) if subsection (1)(a) applies and the notice of election to
cease to be a member of the group is received by the 5
chief executive—
 - “(i) by 30 September in any year, from the beginning
of the next year; or
 - “(ii) after 30 September in any year, from the begin-
ning of the year following the next year; and”. 10

37 New sections 157 and 157A substituted

Section 157 is repealed and the following sections are substituted:

“157 Joint activities

- “(1) This section applies where and to the extent that any 2 or more 15
persons jointly carry out an activity listed in Schedule 3 or 4,
including (but not limited to) in partnership, under an unin-
corporated joint venture, as trustees of a trust, through joint
ownership of land, or under an unincorporated association.
- “(2) If this section applies,— 20
 - “(a) the persons who carry out the activity are to be treated
for the purposes of this Act as members of an unincor-
porated body; and
 - “(b) the unincorporated body is to be treated as the person
carrying out the activity; and 25
 - “(c) the members of the unincorporated body—
 - “(i) are not liable to, and may not, be registered as
a participant under section 56 in respect of the
activity; and
 - “(ii) may not be registered as a participant under sec- 30
tion 57 in respect of the activity; and
 - “(d) the unincorporated body—
 - “(i) must notify the chief executive that it is the par-
ticipant under section 56 in respect of the activity
(if the activity is an activity listed in Schedule 3); 35
and

- “(ii) 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); and
- “(iii) must, when notifying the chief executive or applying to the chief executive to be registered, provide—
 - “(A) the names and contact details of the members of the unincorporated body; and
 - “(B) the name and contact details of the person to whom notices are to be given under this Act; and
 - “(C) a name for the unincorporated body that will be entered on the register of participants and be kept for the purposes of sections 56 and 57; and
- “(e) the chief executive 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 purpose of section 56 or 57 (as applicable); and
- “(f) following entry of the name of the unincorporated body on the register, the unincorporated body is to be treated as the participant in respect of the activity for the purposes of this Act; and
- “(g) 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 a participant in respect of the activity; and
 - “(b) jointly entitled to the benefits of the unincorporated body as a participant in respect of the activity.
- “(4) If this Act requires any thing to be done by or on behalf of 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) For the purposes of this section,—
- “(a) if a person joins an existing unincorporated body, the person’s membership of the unincorporated body begins on the date the person starts carrying out the activity jointly with the other members, as specified in the notice under **section 157A**; and 5
- “(b) a member of an unincorporated body ceases to be a member of the unincorporated body from the date the person ceases to carry out the activity jointly with the other members, as specified in the notice under **section 157A**. 10
- “(6) A notice that is addressed to an unincorporated body and given in accordance with this Act to the person nominated by the unincorporated body in its notice or application under **subsection (2)(d)(iii)** or (if relevant) under **section 157A(2)(a)** is to be treated as notice given to that unincorporated body and all members of the unincorporated body. 15
- “(7) In this section and **section 157A**,— 20
- “**member** means a partner, joint venturer, trustee, joint owner of land, or other member of an unincorporated body (as applicable in the circumstances)
- “**unincorporated body** includes (but is not limited to) a partnership, an unincorporated joint venture, a trust, joint owners of land, or an unincorporated association (as applicable in the circumstances). 25
- “157A Changes to unincorporated bodies**
- “(1) This section applies if a member of an unincorporated body joins or leaves an unincorporated body that is registered as a participant or the name and contact details of the person to whom notices are to be given changes. 30
- “(2) If this section applies,—
- “(a) the unincorporated body must give notice as follows:
- “(i) within 20 working days of a person joining or leaving the unincorporated body, give the chief executive notice of— 35

- “(A) the name and contact details of the person joining or leaving; and
- “(B) the date upon which the person started or ceased carrying out the activity jointly with the other members (as applicable); 5
and
- “(ii) within 20 working days of a change in the name and contact details of the person to whom notices are to be given, give the chief executive notice of that matter; and 10
- “(b) the chief executive must, as soon as practicable after receiving the notice,—
- “(i) amend the chief executive’s records to reflect the change in membership of the unincorporated body or of the change in the name and contact 15
details; and
- “(ii) notify the Registrar of the change in membership of the unincorporated body or of the change in the name and contact details; and
- “(iii) notify the unincorporated body of the amend- 20
ment to the chief executive’s records and the no-
tification to the Registrar.
- “(3) A notice given under **subsection (2)** must—
- “(a) be in the prescribed form; and
- “(b) contain any other information the chief executive may 25
require; and
- “(c) be accompanied by the prescribed fee (if any).”

38 New sections 160 to 161C substituted

Sections 160 and 161 are repealed and the following sections are substituted: 30

“160 Reviews of operation of emissions trading scheme

- “(1) The Minister responsible for the administration of this Act must initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act in each of the following periods: 35
- “(a) the first commitment period and each subsequent commitment period (if any); and
- “(b) if there is no subsequent commitment period,—

- “(i) the 5-year period commencing on 1 January 2013; and
 - “(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**.
- “(2) Each review initiated under **subsection (1)** must be completed no later than 12 months before the end of the period in which the review is initiated. 5
- “(3) Despite anything in **subsections (1) and (2)**,—
 - “(a) the Minister responsible for the administration of this Act must ensure that a review of the matters listed in **subsection (5)(j)** is initiated and completed at least once in each of the following periods: 10
 - “(i) the 5-year period commencing on 1 January 2011; and
 - “(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**; and 15
 - “(b) **subsections (4) to (9)** and **section 161A** apply to each review (an **allocation review**) with all necessary modifications as if the allocation review had been initiated under **subsection (1)**; and 20
 - “(c) each allocation review may—
 - “(i) consider any other matter, including (but not limited to) the matters listed in **subsection (5)**; and
 - “(ii) if the allocation review considers all the matters listed in **subsection (5)**, satisfy the Minister responsible for the administration of the Act’s obligation under **subsection (1)** to initiate a review in the period in which the allocation review was completed. 25 30
- “(4) For the avoidance of doubt, if the reviews initiated under **subsection (1)** result in the matters listed in **subsection (5)(j)** being reviewed at least once in each of the periods listed in **subsection (3)(a)**, then the Minister responsible for the administration of this Act is not obliged under **subsection (3)** to ensure any further review of those matters is initiated. 35
- “(5) Without limiting the scope of the review, a review under **subsection (1)** must consider—

- “(a) whether an amendment to this Act in relation to the emissions trading scheme is necessary or desirable; and
- “(b) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from 5
or additional to any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
- “(c) the stringency of any of the international obligations specified in **paragraph (b)**; and 10
- “(d) the contribution of the emissions trading scheme established under this Act towards any targets that are in effect in accordance with section 224 **or 225** at the time the review is initiated; and
- “(e) the types of Kyoto units and overseas units that may be 15
surrendered for compliance with the emissions trading scheme established by this Act; and
- “(f) the operation of the commitment period reserve (if any); and
- “(g) the potential for linkage of the emissions trading 20
scheme established under this Act to other greenhouse gas emissions trading schemes, including (but not limited to) Australia’s carbon pollution reduction scheme; and
- “(h) the appropriateness of any methodologies that are pre- 25
scribed for calculating emissions and removals; and
- “(i) whether it is necessary or desirable to—
 - “(i) omit any of the activities from Schedule 3 or 4; and
 - “(ii) add any additional removal activities to Part 2 of 30
Schedule 4; and
 - “(iii) amend the level of participant opt-in thresholds in Schedule 4; and
- “(j) what changes to the following aspects of allocation (as applicable) to industry and agriculture under **sec-** 35
tion 82 or 86 are necessary or desirable:
 - “(i) the phase-out rate:
 - “(ii) the level of assistance prescribed for eligible activities:

- “(iii) the emissions intensity thresholds:
- “(iv) the determination of trade-exposed activities:
- “(v) the determination of eligible industrial activities;
and
- “(k) the appropriateness of the penalties in subpart 4 of this Part; and 5
- “(l) the implications (if any) of the following matters for the notification of intention under **section 70**:
 - “(i) New Zealand’s annual emissions for the 5 years before notification; and 10
 - “(ii) the average price of units for the 2 years before notification; and
- “(m) the impacts of the forestry sector elements of the emissions trading scheme established under this Act on biodiversity within New Zealand; and 15
- “(n) the costs and benefits of establishing an independent or quasi-independent government body to carry out the allocation process, or part of the allocation process, contained in subpart 2 of Part 4 of this Act; and
- “(o) the social, economic, and environmental effects of the emissions trading scheme established by this Act (other than those considered under **paragraphs (a) to (l)**); and 20
- “(p) any other matter that the Minister responsible for the administration of this Act considers relevant. 25
- “(6) The Minister responsible for the administration of this Act must appoint a panel to conduct any review under **subsection (1)** and report in accordance with terms of reference set by the Minister and the matters set out in this section.
- “(7) Following the completion of each review under **subsection (1)**, the Minister responsible for the administration of this Act must— 30
 - “(a) publish the report of the panel on the review; and
 - “(b) present a copy of the report to the House of Representatives. 35
- “(8) If the review recommends any legislative change in relation to allocation to industry or agriculture that involves amending any Act or making or amending regulations under **section 161A**, the Minister must—

- “(a) prepare a report that contains a response to the panel’s recommendations for legislative change; and
- “(b) present a copy of his or her report to the House of Representatives.
- “(9) The Minister responsible for the administration of this Act 5
may initiate reviews of the operation and effectiveness of the emissions trading scheme established by this Act at any time and may use any method of review (including, but not limited to, the method specified in this section).
- “**161 Appointment and conduct of review panel** 10
- “(1) When appointing members to a review panel under **sec-**
tion 160, the Minister responsible for the administration of
the Act must—
 - “(a) ensure that there are a minimum of 3 and a maximum 15
of 7 members; and
 - “(b) ensure that the majority of 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 experi-
ence to conduct the review, including knowledge, skill, 20
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 25
 - “(iii) the operation of the emissions trading scheme es-
tablished under this Act, including its environ-
mental, 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 30
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 responsible for the adminis-
tration of this Act at least 1 month prior to completion of the
final report. 35
- “(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 within the time allowed by **subsection (3)**. 5
- “(5) In conducting a review, the 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 10
 - “(b) may call for submissions.
- “161A Regulation-making powers in relation to allocation of New Zealand units**
- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or 15 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 or eligible agricultural activity, as appropriate,— 20
 - “(i) the allocative baseline; and
 - “(ii) the input and outputs, and biological, physical, or chemical transformation taking place; and
 - “(iii) whether the activity is, for the purposes of subpart 2, to be treated as— 25
 - “(A) highly emissions-intensive; or
 - “(B) moderately emissions-intensive; and
 - “(iv) the unit (or units) of production for the purposes of the variable OSY in the allocation formula in **sections 82, 84, 85A, or 86**; and 30
 - “(v) the methodology or methodologies for calculating the volume of a unit (or units) of production for the purposes of **section 82, 84, 85A, or 86**.
 - “(2) Before recommending the making of a regulation under **subsection (1)(b)** that prescribes the allocative baseline for an 35 eligible industrial activity (but not before recommending the making of any other regulation under this section), the Min-

ister must have regard to the following **paragraphs (a) and (b)** or **paragraph (c)** or **paragraphs (c) and (d)**:

- “(a) the average emissions from the direct use of natural gas, geothermal fluid, used or waste oil, coal, and (if relevant) any emissions for which the person carrying out the activity is liable under Part 4 of Schedule 3, per unit of production across all entities conducting the eligible industrial activity in New Zealand, for which data has been provided, during the 2006/07, 2007/08, and 2008/09 financial years: 5
- “(b) the average electricity use per unit of production across all entities conducting the specified activity in the 2006/07, 2007/08, and 2008/09 financial years, and an electricity allocation factor set to represent the cost increases from the use of electricity (with enough flexibility to enable protection from pass through of costs provided by large electricity contracts to be considered): 10
- “(c) evidence of the equivalent emissions and electricity use per unit of production from Australia (also with flexibility to take into account large electricity contracts in New Zealand and the difference in electricity generation mixes in Australia and New Zealand): 15
- “(d) evidence about liquid fossil fuel use per unit of production from Australia, if the eligible industrial activity has been prescribed in reliance on **subsection (6)**. 20
- “(3) Subject to **subsection (6)**, the Minister may not recommend that a regulation be made under **subsection (1)(a)** prescribing an activity as an eligible industrial activity unless the Minister is satisfied that the activity— 25
- “(a) is moderately emissions-intensive or highly emissions-intensive; and
- “(b) is trade-exposed.
- “(4) For the purposes of this section, an eligible industrial activity— 30
- “(a) is moderately emissions-intensive if the weighted average emissions-intensity from those carrying out the activity in the years for which data has been provided under **section 161B** were equal to or greater than 800 35

- whole tonnes of emissions per \$1 million of revenue from the activity, but less than 1600 whole tonnes of emissions per \$1 million of revenue:
- “(b) is highly emissions-intensive if the weighted average emissions-intensity from those carrying out the activity in the years for which data has been provided under **section 161B** were equal to or greater than 1600 whole tonnes of emissions per \$1 million of revenue from the activity: 5
- “(c) is, subject to **subsection (6)**, trade-exposed unless, at the time the Minister considers the eligibility of the relevant activity, in the Minister’s opinion— 10
- “(i) there was no international trade of the output of the activity across oceans; or
- “(ii) it was not economically viable to export or import the output of the activity. 15
- “(5) Despite anything in this section, the generation of electricity is not to be treated as trade-exposed.
- “(6) The Minister may recommend that regulations be made under **subsection (1)(a) and (b)(iii)** prescribing an activity as an eligible activity that is moderately emissions-intensive or highly emissions-intensive if emissions from the activity would enable, or is likely to enable, those carrying out the same activity in the Commonwealth of Australia to receive a free allocation of units in that jurisdiction. 20 25
- “(7) In determining whether to recommend that an activity be prescribed as an eligible industrial activity, the Minister must have regard to the following:
- “(a) *principle 1*: each eligible industrial activity should be an activity by which a chemical or physical transformation of inputs produces a given set of outputs: 30
- “(b) *principle 2*: activities should not be defined by reference to the technology employed, the fuel used, the age of the plant, or the quality and types of feedstock used:
- “(c) *principle 3*: despite principle 2, activities may be defined by reference to their emissions or electricity use, provided that those references are integral and essential to the defined physical and chemical transformation that transforms the inputs into outputs: 35

- “(d) *principle 4*: that definition of activities should—
 - “(i) be consistent and equitable across industries; and
 - “(ii) take into consideration the impact that the definition may have on business investment, location, and the structure of activities; and 5
 - “(iii) take into consideration the potential for intermediate inputs produced within the activity to be substituted for bought-in inputs:
- “(e) *principle 5*: there should be no overlap between different activity definitions: 10
- “(f) *principle 6*: definitions of activities should reflect activity definitions in the Commonwealth of Australia unless the relevant New Zealand activity’s inputs, outputs, physical or chemical transformation is materially different: 15
- “(g) any other matters that the Minister considers relevant.
- “(8) To avoid doubt, the Minister may, in determining whether an activity meets a threshold in **subsections (4)(a) and (b)**, take into account the emissions intensity from electricity use used for the purposes of determining the eligibility of the activity 20 for an allocation of units in the Commonwealth of Australia.
- “(9) A regulation that amends the regulations made under **subsection (1)** and has the effect of removing or substantially redefining an eligible activity comes into force on the day 5 years after the date of their notification in the *Gazette* or any later date that 25 may be set by the regulations.

“161B Power to require information for allocation to industry

- “(1) For the purposes of determining matters relating to the recommendation of regulations under **section 161A** in relation to an eligible industrial activity, including whether an activity satisfies the tests in **section 161A(4)** and is an eligible industrial activity, and for the purpose of considering its allocative baseline, and to inform the review under **section 160**, the Minister may, by notice in the *Gazette*, require any person carrying out any activity specified in the notice at the date of the notice to 30 provide any or all of the following information to the Minister: 35

- “(a) financial statements for the financial years 2006/07, 2007/08 and 2008/09 that show the total revenue of the person from carrying out the activity:
- “(b) the emissions from the activity carried out by the person in the financial years 2006/07, 2007/08, and 2008/09: 5
- “(c) any other information that in the Minister’s opinion would assist in deciding whether or not to recommend that the activity be prescribed as an eligible industrial activity or deciding what allocative baseline to recommend for an activity for the purposes of this subpart. 10
- “(2) A *Gazette* notice under **subsection (1)** including any information necessary to inform the decision under **section 161A(3)**—
- “(a) must state the date by which the information specified in the notice must be provided to the Minister, which date 15 must not be less than 30 working days from the date of the notice; and
- “(b) must specify—
 - “(i) how revenue is to be calculated for the purposes of **subsection (1)(a)**; and 20
 - “(ii) how emissions from the activity are to be calculated for the purposes of **subsection (1)(b)**; and
- “(c) may contain guidelines or standards with which any data or other information to be provided under the notice must comply. 25
- “(3) Any guidelines or standards included in a notice under **subsection (1)** may incorporate any of the material referred to in section 169(1) by reference, and if they do incorporate such material, sections 169(2) and (3), and 170 to 177 apply with any necessary modifications. 30
- “(4) A *Gazette* notice under **subsection (1)** is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.
- “(5) A *Gazette* notice under **subsection (1)** must take a consistent approach as to how emissions are to be calculated for the purposes of **subsection (1)(b)** (for example, the emissions associated with auxiliary activities, such as head office and administrative operations, must either be included in respect 35

of all activities for which a notice is issued or be excluded in respect of all of those activities).

- “(6) If a person who is required to comply with a *Gazette* notice under **subsection (1)(a)** fails to provide the required information by the date specified in the notice, the Minister must 5
give a notice to the person requiring the information to be provided within 10 working days and advising the person of the consequences of **subsection (7)** if the person does not respond within the time allowed.
- “(7) Despite anything in this Act, if an activity referred to in a 10
Gazette notice under **subsection (1)(a)** is subsequently prescribed as an eligible industrial activity, 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 in the notice under **subsection (6)** is not 15
eligible to apply for an allocation of units in respect of carrying out the eligible industrial activity.

“**161C Procedure for regulations relating to allocation to industry**

- “(1) Before recommending the making of regulations under **section 161A**, the Minister must consult, or be satisfied that the 20
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 definitions of potentially eligible industrial activities in any regulations made 25
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; 30
and
 - “(b) making copies of the draft regulations available on the Internet site of the chief executive of the department responsible for the administration of this Act and in hard copy; and
 - “(c) the provision of a reasonable opportunity for interested 35
persons to consider the recommendation and make submissions; and
 - “(d) adequate and appropriate consideration of submissions.

“(3) A failure to comply with this section does not affect the validity of the regulations made under **section 161A**.”

39 Regulations relating to methodologies and verifiers

Section 163(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) authorising, in respect of an activity listed in Part 1 of Schedule 3 or Part 1 of Schedule 4, the chief executive 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”.

40 Regulations relating to fees and charges

(1) Section 167 is amended by repealing subsection (2) and substituting the following subsection:

“(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 chief executive 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 chief executive 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.”
- (2) Section 167(3) is amended by repealing paragraph (b) and substituting the following paragraph: 5
- “(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:” 10
- (3) Section 167(4) is amended by adding “; and” and also by adding the following paragraphs:
- “(i) authorise the chief executive 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 15
- “(j) authorise the chief executive to grant, in whole or in part, an exemption, waiver, or refund in relation to any fee or charge.” 20

41 Other regulations

- (1) Section 168(1)(c) is repealed.
- (2) Section 168(1)(e) is amended by inserting “and the circumstances in which carbon accounting areas may be redefined” after “areas”. 25
- (3) Section 168(1)(h) and (i) are repealed.

42 When deforestation to be treated as occurring in respect of pre-1990 forest land

- Section 181 is amended by adding the following subsection: 30
- “(4) This section applies only if section 4(5) does not apply.”

43 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land

Section 183(1)(a) and (b) and (2)(c) are amended by omitting “section 71” in each place where it appears and substituting in each case “section 73”.

5

44 Exemptions for deforestation of land with tree weeds

- (1) Section 184(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(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”.

10

- (2) Section 184(1)(b) is amended by omitting “under section 71” and substituting “referred to in **section 73**”.

- (3) Section 184(2) is amended by adding “; and” and also by adding the following paragraph:

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“(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 under this section.”

- (4) Section 184(4)(d) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

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“(ii) a forest species growing on the land, or that grew on the land prior to clearing as part of the deforestation process, is or was a specified type of tree weed; and”.

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- (5) Section 184(5) is amended by inserting “and the number of whole tonnes of emissions that will be covered by exemptions” after “priorities”.

- (6) Section 184(5)(b) is amended by omitting “the land” and substituting “any land”.

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- (7) Section 184 is amended by repealing subsection (6) and substituting the following subsection:

“(6) The clearing of tree weeds on exempt land that has not been cleared prior to the land being declared exempt land must be—

“(a) commenced within 24 months of the date of notification of the exemption; and

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“(b) completed by the end of—

- “(i) the first commitment period, if the exemption is granted in the first commitment period; or
 - “(ii) a subsequent commitment period, if the exemption is granted in the subsequent commitment period; or 5
 - “(iii) if there is no subsequent commitment period, the 5-year period commencing on 1 January 2013 if the exemption is granted in the 5-year period commencing on 1 January 2013.”

- 45 **Conditions on registration as participant in respect of certain activities relating to post-1989 forest land** 10
Section 187(3) is amended by omitting “and subject to sections 191 and 193,”.

- 46 **Registration as participant in respect of post-1989 forest land** 15
- (1) Section 188(1) is amended by repealing paragraph (c) and substituting the following paragraph:
 - “(c) must be accompanied by a declaration, in the prescribed form, that—
 - “(i) any action taken by the applicant after 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 prior to planting of the forest species on the land) complied with the provisions 20 of the Resource Management Act 1991, including any plan under that Act, and the Forests Act 1949, as in force at the time the action was taken; and 25
 - “(ii) the post-1989 forest land in respect of which the application is submitted complies with any pest management strategy under the Biosecurity Act 1993 in relation to that land; and”.
- (2) Section 188 is amended by repealing subsection (2) and substituting the following subsection: 35

- “(2) The chief executive 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 5
 - “(b) the net emissions and removals reported in emissions returns submitted in relation to the carbon accounting area or areas; and
 - “(c) the unit balance of the carbon accounting area or areas calculated in accordance with **section 190**.” 10
- (3) Section 188(3)(a)(i) is amended by inserting “or areas” after “area”.
- (4) Section 188(3)(a)(ii) is amended by inserting “or areas” after “area”.
- (5) Section 188(3)(a)(ii) is amended by omitting “; and” and substituting “; or”. 15
- (6) Section 188(3)(a) is amended by adding the following subparagraph:
- “(iii) redefine, in the circumstances prescribed, the carbon accounting area or areas in respect of which the person is recorded as a participant; and” 20
- (7) Section 188(3)(b) is amended by inserting “, as soon as practicable,” after “must”.
- (8) Section 188(6) is amended by adding “; or” and also by adding the following paragraph: 25
- “(c) receives an application to redefine a carbon accounting area or areas, the chief executive must, if satisfied that the application complies with the prescribed requirements,—
 - “(i) calculate the unit balance of each of the new carbon accounting areas in accordance with **section 190**; and 30
 - “(ii) update the participant’s record to show the redefined carbon accounting area or areas and their unit balances; and 35
 - “(iii) notify the participant accordingly.”
- (9) Section 188(7)(b) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

- “(ii) update the participant’s record to reflect—
 - “(A) the changes made to the participant’s carbon accounting area or areas; and
 - “(B) if land is 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, the unit balance of the post-1989 forest land remaining in the carbon accounting area, as calculated in accordance with **section 190**; and
 - “(iii) notify the participant accordingly.”
- (10) Section 188(8) is amended by omitting “(6)(b)(ii)” in each place where it appears and substituting in each case “(6)(b)(ii), (6)(c)(iii).”
- 47 Emissions returns for post-1989 forest land activities**
- (1) Section 189(2) is amended by adding “; and” and also by adding the following paragraph:
 - “(d) may, if the person is considering entering into a transaction described in **section 192(1)(a) or (b)**, or if the expiry of an interest referred to in **section 192(1)(c)** is imminent, submit an emissions return in accordance with **subsection (4A)**.”
- (2) Section 189(3) is amended by—
 - (a) omitting “before” and substituting “on or before”;
 - (b) inserting “on 1 occasion,” after “applies may.”
- (3) Section 189(4)(b)(i)(B) is amended by omitting “; and” and also by adding the following subsubparagraph:
 - “(C) 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”.
- (4) Section 189 is amended by inserting the following subsection after subsection (4):

- “(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 the proposed transaction or expiry of the interest relates that is in respect of the period— 5
- “(a) commencing on the later 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 10
- “(iii) 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: 15
- “(b) ending on the date of submission of the emissions return.”
- (5) Section 189(5) is amended by inserting “or **(4A)**” after “or 20
(4)”.
- (6) Section 189 is amended by inserting the following subsection after subsection (8):
- “(8A) Subsections (6) and (7) apply to a return submitted under **subsection (4A)** as if it were a return submitted under subsection 25
(4).”
- 48 New sections 190 to 193 substituted**
- Sections 190 to 193 are repealed and the following sections substituted:
- “190 Special rules regarding surrender of units in relation to post-1989 forest land 30**
- “(1) Despite anything in this Act, 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. 35

- “(2) The unit balance of a carbon accounting area must be calculated in accordance with the following formula:

$$UB = A - B$$

where—

- UB is the unit balance of the carbon accounting area 5
- A is the net number of New Zealand units transferred for removals from the carbon accounting area in respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in Part 1 of Schedule 4 in respect of the land (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8)) 10
- B is the net number of New Zealand units surrendered for emissions from the carbon accounting area in respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in Part 1 of Schedule 4 in respect of the land (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7). 15

- “(3) The carbon density of a carbon accounting area must be calculated in accordance with the following formula: 20

$$CD = UB/H$$

where—

- CD is the carbon density of the carbon accounting area
- UB is the unit balance of the carbon accounting area 25
- H is the number of hectares in the carbon accounting area.

- “(4) The unit balance of part of a carbon accounting area must be calculated in accordance with the following formula:

$$UBp = CD \times Hp$$

where—

- UBp is the unit balance of the part of the carbon accounting area 30
- CD is the carbon density of the carbon accounting area of which the part carbon accounting area formed part, calculated in accordance with **subsection (3)** 35

Hp is the number of hectares in the part of the carbon accounting area for which a unit balance is being calculated .

- “(5) If a person is required by this subpart to calculate the unit balance of a carbon accounting area, the following provisions 5
apply:
- “(a) if land has been removed from the carbon accounting area (whether voluntarily, because the person has ceased carrying out an activity listed in Part 1 of Schedule 4 in respect of that land, or because of transmission 10
of an interest in part of the carbon accounting area), the person must calculate the unit balance of the land remaining in the carbon accounting area in accordance with **subsection (4)**, and Hp is the number of hectares of post-1989 forest land that remain in the carbon 15
accounting area:
 - “(b) if the carbon accounting area is constituted by the operation of **section 192(3)(d)**, the person must calculate the unit balance of the land covered by the transmitted interest in accordance with **subsection (4)**, and Hp is 20
the number of hectares of post-1989 forest land covered by the transmitted interest (and that constitutes the new carbon accounting area):
 - “(c) if the carbon accounting area has been constituted as part of a redefinition of an existing carbon accounting area or areas, the person must calculate the unit balance 25
of each part of an existing carbon accounting area that forms part of the new carbon accounting area in accordance with **subsection (4)** and must add together the unit balances of all parts of the existing carbon accounting area that form part of the new carbon accounting 30
area to get the unit balance for the new carbon accounting area.
- “(6) For the purposes of this section,—
- “(a) any units issued in respect of the post-1989 forest land 35
while it was the subject of a forest sink covenant under the Forests Act 1949 must be treated as New Zealand units transferred under this Act in respect of removals from the post-1989 forest land:

- “(b) units transferred for removals, surrendered, repaid, or reimbursed in respect of a carbon accounting area include units that a person would have been entitled to receive, or would have been required to surrender or repay, in respect of a carbon accounting area, but which were not actually transferred, surrendered, repaid, or reimbursed because of an election under section 189(8): 5
 - “(c) **hectare** includes any fraction of a hectare.
- “**191 Ceasing to be registered as participant in respect of post-1989 forest land** 10
- “(1) A person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 must submit an emissions return to the chief executive within 20 working days of—
 - “(a) being removed from the register in respect of that activity; or 15
 - “(b) ceasing to be a participant in respect of all or part of a carbon accounting area in respect of which the person is recorded as carrying out the activity under section 188; or
 - “(c) removing land from a carbon accounting area or removing a carbon accounting area from the land in respect of which the person is recorded as a participant under section 188. 20
- “(2) **Subsection (1)** is subject to **section 193**.
 - “(3) The emissions return must— 25
 - “(a) be in respect of such of the following as is relevant:
 - “(i) if the person has been removed from the register in respect of an activity listed in Part 1 of Schedule 4, all carbon accounting areas in respect of which the person was, immediately prior to being removed from the register, recorded as a participant: 30
 - “(ii) if the person has ceased to carry out an activity listed in Part 1 of Schedule 4 in respect of which the person is registered as a participant on all of a carbon accounting area or has removed a carbon accounting area from the person’s post- 35

- 1989 forest land recorded under section 188, that carbon accounting area:
- “(iii) if the person has ceased to carry out an activity listed in Part 1 of Schedule 4 in respect of which the person is registered as a participant on part of a carbon accounting area or has removed land from a carbon accounting area, the part of the carbon accounting area on which the person has ceased to carry out the activity or that has been removed; and
 - “(b) state the unit balance of each carbon accounting area, or part of a carbon accounting area, covered by the return, calculated in accordance with **section 190**; and
 - “(c) be submitted in the prescribed manner and format; and
 - “(d) be accompanied by any prescribed fee or charge and other prescribed information; and
 - “(e) be signed by the participant or former participant.
- “(4) A person required to submit an emissions return under this section must, within 20 working days of the date by which the return is required to be submitted under **subsection (1)**, surrender the unit balance for the post-1989 forest land covered by the return (calculated by adding together the figures for each carbon accounting area or part of a carbon accounting area covered by the return).
- “**192 Effect of transmission of interest in post-1989 forest land**
- “(1) This section applies if—
- “(a) a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 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 to a person described in the third column:
 - “(b) a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 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:

- “(c) 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, is, in relation to that interest, registered as a participant in respect of an activity listed in Part 1 of Schedule 4: 5

Part A

Person registered as participant in respect of activity in Part 1 of Schedule 4	Interest transferred	New partici- pant	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 for- est 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

Part A

Person registered as participant in respect of activity in Part 1 of Schedule 4	Interest transferred	New partici- pant	New activity in Part 1 of Schedule 4
Leaseholder under a regis- tered 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 regis- tered lease of post-1989 forest land
Party to a Crown con- servation contract	Crown con- servation 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

Person registered as participant in respect of activity in Part 1 of Schedule 4	Interest en- tered into	New partici- pant	New activity in Part 1 of Schedule 4
Land owner of post-1989 forest land	Registered forestry right over post- 1989 for- est 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 for- est 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 con- servation contract over post-1989 forest land in respect of which the person is recorded as a participant	Party to the Crown con- servation contract	Being a party to a Crown conservation contract

Part C**Person
registered as
participant
in respect
of activity
in Part 1 of
Schedule 4****Interest ex-
pired or ter-
minated****New partici-
pant****New activity
in Part 1 of
Schedule 4**Holder of
a registered
forestry right
over post-
1989 forest
landRegistered
forestry right
over post-
1989 for-
est land in
respect of
which the
person is
recorded as a
participantLandowner
of the post-
1989 forest
landOwning
post-1989
forest landLeaseholder
under a regis-
tered lease
of post-1989
forest landRegistered
lease over
post-1989
forest land
in respect of
which the
person is
recorded as a
participantLandowner
of the post-
1989 forest
landOwning
post-1989
forest landParty to a
Crown con-
servation
contractCrown con-
servation
contract over
post-1989
forest land
in respect of
which the
person is
recorded as a
participantLandowner
of the post-
1989 forest
landOwning
post-1989
forest land.“(2) In **subsections (3) to (7)**,—

- “(a) each of the persons described in the first column of the table in **subsection (1)** is a **transferor**:
- “(b) each of the persons described in the third column of the table in **subsection (1)** is a **transferee**:
- “(c) **transmitted interest** means,—5
 - “(i) in the circumstances described in **subsection (1)(a)**, the post-1989 land, registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is transferred: 10
 - “(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: 15
 - “(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: 20
- “(d) **date of transmission** means,—
 - “(i) in the circumstances described in **subsection (1)(a)**, the date of transfer of post-1989 land, registered forestry right over post-1989 forest land, or registered lease of post-1989 forest land, or Crown conservation contract: 25
 - “(ii) in the circumstances described in **subsection (1)(b)**, the date of registration of the forestry right over post-1989 forest land or lease of post-1989 forest land, or the date the Crown conservation contract is entered into: 30
 - “(iii) in the circumstances described in **subsection (1)(c)**, the date the registered forestry right over post-1989 forest land, or registered lease of post-1989 forest land, or the Crown conservation contract expires or is terminated. 35
- “(3) If this section applies,—
 - “(a) the transferor must submit an emissions return in accordance with **section 193**; and

- “(b) subject to **subsection (4)**, the transferor and transferee must, within 10 working days of the date of transmission of the transmitted interest, notify the chief executive of the transmission; and
 - “(c) from the date of transmission, the person described in the first column of the table in **subsection (1)** ceases to be the participant under this Act in relation to the transmitted interest and the person described in the third column of the table becomes the participant in relation to the transmitted interest; and
 - “(d) 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.
- “(4) If this section applies because a transmitted interest has been transmitted by operation of law, the notice under **subsection (3)(b)** must be given as soon as possible after the date of transmission.
- “(5) A notice under **subsection (3)** must be—
- “(a) in the prescribed form; and
 - “(b) accompanied by any prescribed fee and any prescribed information; and
 - “(c) signed by both the transferor and the transferee.
- “(6) Following receipt of a notice complying with **subsection (5)** and the emissions return complying with **section 193**, the chief executive 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 the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in **subsection (1)**, and enter the carbon accounting area and its unit balance on the participant’s record under **section 188(2)**;
 - “(b) if the transferee is already registered under section 57, amend that registration, if necessary, to show that the transferee is now 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 and update the chief ex-

- ecutive's record of the participant's carbon accounting areas under section 188(2):
- “(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 the transmitted interest, remove the transferor's name from the register in respect of that activity: 5
 - “(d) if the transferor or transferee is registered under section 57 as a participant in respect of an activity listed in Part 1 of Schedule 4 other than in respect of the transmitted interest, update the chief executive's records under **section 188(2)**: 10
 - “(e) as applicable, give notice to the transferor and transferee of the action taken by the chief executive under **paragraphs (a) to (d)**. 15
- “(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 filing of returns and surrendering of units required under section 189); and 20
 - “(b) a transferor is not required to notify the chief executive separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity. 25
- “193 Emissions returns in relation to transmitted interests**
- “(1) If **section 192** applies, the transferor (as defined in that section) is not required to submit an emissions return under **section 191**, but must, within 20 working days of the date of transmission, submit an emissions return to the chief executive under this section. 30
 - “(2) An emissions return under this section must— 35
 - “(a) be in respect of the carbon accounting area or areas, or part of a carbon accounting area, to which the transmitted interest relates, being,—

- “(i) if the transmitted interest relates to 1 or more whole carbon accounting areas, that carbon accounting area or those carbon accounting areas; and
- “(ii) if the transmitted interest relates to part of a carbon accounting area, that part of the carbon accounting area; and 5
- “(b) record the emissions and removals in the period covered by the return from each of the carbon accounting areas, or part of a carbon accounting area, covered by the return, as calculated in accordance with regulations made under this Act; and 10
- “(c) in respect of each carbon accounting area or part of a carbon accounting area covered by the return, be for the period,— 15
 - “(i) commencing on the later of—
 - “(A) the first day of the mandatory emissions return period (as defined in section 189(9)) in which the interest was transmitted; or
 - “(B) the date on which the land that was transmitted became post-1989 forest land; and 20
 - “(ii) ending on the date of transmission; and
- “(d) comply with section 189(5) and (6), as if the references in those provisions to subsection (4) were references to this section. 25
- “(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 references in that provision to ‘this section’ were references to **section 193**.” 30

49 Information about status of forest land

- (1) Section 194(2) is amended by repealing paragraph (b) and substituting the following paragraph: 35
 - “(b) the following information:
 - “(i) the net emissions and removals that have been calculated and reported in emissions returns sub-

- mitted in a relation to the carbon accounting area or areas; and
- “(ii) the unit balance of the carbon accounting area or areas.”
- (2) Section 194(2)(c) and 194(3) are repealed. 5
- (3) Section 194(2)(b) is consequentially amended by omitting “; and”.
- 50 Section 196A repealed**
Section 196A is repealed.
- 51 New section 201 substituted** 10
Section 201 is repealed and the following section substituted:
- “201 Effect of registration by purchasers of jet 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 jet fuel that is purchased by a person who is a participant in 15
respect of an activity listed in Part 3 of Schedule 4.”
- 52 Participant with respect to mining coal or natural gas**
Section 204 is amended by adding the following subsections:
- “(3) Despite subsection (2)(a), **subsection (4)** applies if—
- “(a) a permit relating to mining natural gas is held by 2 or 20
more persons jointly under terms that entitle the individual holders to a proportion of the gas mined under the permit; or
- “(b) a permit relating to mining coal is held by 2 or more 25
persons jointly under terms that entitle the individual holders to a proportion of the coal mined under the permit.
- “(4) If this subsection applies,—
- “(a) section 157 does not apply; and
- “(b) each of the persons referred to in **subsection (3)**— 30
- “(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.

“(5) However, if 2 or more persons referred to in **subsection (3)** are members of a group, then for the purposes of this Act those persons may, in relation to the natural gas or coal (as applicable) to which the persons are entitled under the permit, elect to comply with this Part—

“(a) as individual participants; or 10

“(b) as an unincorporated body in accordance with section 157.”

53 Mining natural gas in exclusive economic zone and continental shelf

Section 205 is amended by inserting the following subsection after subsection (1): 15

“(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, within 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.” 20

54 New section 208 substituted

Section 208 is repealed and the following section substituted:

“**208 Purchase of coal or natural gas from wholly owned subsidiary of Part 3 of Schedule 3 participant** 25

“(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 a wholly owned subsidiary or the holding company of a participant who mines coal or natural gas. 30

“(2) In **subsection (1), subsidiary and holding company** have the same meaning as in section 5 of the Companies Act 1993.”

55 Effect of registration by purchasers of coal or natural gas
Section 212 is amended by omitting “comply with section 62, report in an emissions return, or surrender units,” and substitute “surrender units”.

56 Subpart 4 of Part 5 substituted 5
Subpart 4 of Part 5 is repealed and the following subpart substituted:

“Subpart 4—Agriculture

“213 Participant in respect of subpart 4 of Part 5 of Schedule 3

“(1) If the activity listed in subpart 4 of Part 5 of Schedule 3 is 10
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 chief executive 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 15
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— 20

“(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 landowner, and is for a term of at least 3 years; or 25

“(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 landowner, and had at least 3 years until expiry at the date appointed in the Order in Council. 30

“(2) If the chief executive 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. 35

**“214 Certain participants not required to surrender units
in respect of synthetic fertiliser containing nitrogen in
certain circumstances**

A participant who carries out the activity in subpart 1 of Part 5
of Schedule 3 of importing or manufacturing synthetic fertilis- 5
ers containing nitrogen is not required to surrender units in
respect of any synthetic fertiliser containing nitrogen that is
permanently embedded in a product as part of a manufactur-
ing process, such as in the manufacture of resin, and does not
result in any emissions.” 10

57 Transitional provision for penalties

Section 217 is amended by repealing subsection (1) and sub-
stituting the following subsection:

- “(1) This section applies to a participant who submits an annual
emissions return in respect of an activity listed in— 15
- “(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
Parts 3 and 4 of Schedule 4 that relates to the period
1 January 2010 to 31 December 2010; or 20
 - “(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 1 January 2015 to 31 December 2015; or
 - “(e) subpart 2 or 4 of Part 5 of Schedule 3 that relates to the 25
first year in respect of which the participant is required
to surrender units for emissions from the activity.”

58 Transitional provision for voluntary reporting

- (1) Section 218(1)(a)(ii) is amended by omitting “Part 5” and sub-
stituting “subpart 1 or 3 of Part 5”. 30
- (2) Section 218(1)(a)(iii) is amended by omitting “2011; or” and
substituting “2011:” and also by adding the following subpara-
graph:
 - “(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year
commencing on the date appointed in an Order in 35
Council made under section 2A(8) or (9) (or an
Order in Council amending an Order in Council

made under one of those sections) on and after which the relevant subpart applies to the person; or”.

- (3) Section 218(1)(b)(iii) is repealed.
- (4) Section 218(2)(a) is amended by omitting “subsection (1)(a)” 5
and substituting “subsection (1)(a)(i) to (iii)”.
- (5) Section 218(2) is amended by inserting the following paragraph after paragraph (a):
“(ab) must, if the person carries out an activity in **subsection (1)(a)(iv)** during the relevant period, notify the 10
chief executive under section 56 that the person is a participant in respect of the activity.”.
- (6) Section 218(2)(a) is consequentially amended by inserting
“unless **paragraph (ab)** applies” after “but is not required 15
to”.

59 Transitional provision for mandatory reporting by certain participants

- (1) Section 219(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
“(i) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 20
3 in the period 1 January 2010 to 30 June 2010:”.
- (2) Section 219(1)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
“(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period 25
1 January 2012 to 31 December 2014:”.
- (3) Section 219(1)(a)(iii) is amended by omitting “2012; or” and substituting “2012:” and also by adding the following subparagraph:
“(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year 30
following the year commencing on the date appointed in an Order in Council made under section 2A(8) or (9) (or an Order in Council amending an Order in Council made under one of those sections) on and after which the relevant subpart 35
applies to the person; or”.
- (4) Section 219(1) is amended by repealing paragraph (b) and substituting the following subparagraph:

- “(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.”
- (5) Section 219 is amended by adding the following subsection:
- “(3) Despite anything in this Act, in addition to the requirements specified in section 65, a person to whom subsection (1)(a)(i) or (b) applies must record in the 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 subpart 1 or 3 of Part 5 of Schedule 3, calculated and, if required, verified under section 62(b) and (c), for the period—
- “(a) 1 January 2010 to 31 December 2010; and
- “(b) 1 July 2010 to 31 December 2010.”
- 60 New section 220 substituted**
- Section 220 is repealed and the following section substituted:
- “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 that period, is not entitled to be transferred units under section 64 in relation to any removals reported in any return for removals from the activity 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 reported in that return; and
- “(c) in addition to satisfying the requirements in section 65, a person to whom **paragraph (a)** applies must record in the person’s annual emissions return, or in any other

emissions return that relates to dates within that period, the removals calculated and, if required, as verified under section 62(b) and (c) for the period 1 July 2010 to 31 December 2010.”

61 New sections 222A to 222G inserted 5

The following sections are inserted after section 222:

“222A Transitional provision for liability to surrender units to cover emissions

- “(1) This section applies to a person who—
- “(a) carries out an activity listed in Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 in the period 1 July 2010 to 31 December 2012; or
 - “(b) is a participant in relation to an activity listed in Part 3 or 4 of Schedule 4 in the period 1 July 2010 to 31 December 2012.
- “(2) Despite anything in this Act, a person to whom this section applies is only liable to surrender, and may only surrender, 1 unit for each 2 whole tonnes of emissions from the activity in the period referred to in **subsection (1)**.

“222B Transitional provision for entitlement to receive New Zealand units for removal activities 20

- “(1) This section applies to a person who is—
- “(a) a participant in respect of an activity listed in Part 2 of Schedule 4 in the period 1 July 2010 to 31 December 2012; and
 - “(b) entitled to receive units under section 64 in respect of that period.
- “(2) Despite anything in this Act, a participant to whom this section applies is entitled to receive only 1 New Zealand unit for each 2 whole tonnes of removals from the activity in respect of the period referred to in **subsection (1)**.

“222C Transitional provisions for liability to surrender units to cover emissions

- “(1) This section applies if—
- “(a) a person is required to surrender units—

- “(i) under section 65(4), 118(5), 187, 189(8), **191, or 193** in respect of an activity listed in Part 1 of Schedule 3 or Part 1 of Schedule 4 for any part of the period 1 January 2008 to 31 December 2012; or 5
- “(ii) under section 65(4) or 118(5) in respect of emissions for any part of the period 1 July 2010 to 31 December 2012; or
- “(b) the chief executive is required under section 123(4) or 189(7)(d) to arrange for the reimbursement of excess units because a person surrenders too many units— 10
- “(i) in respect of emissions for any part of the period 1 July 2010 to 31 December 2012; or
- “(ii) in respect of emissions for an activity listed in Part 1 of Schedule 3 or Part 1 of Schedule 4 for any part of the period 1 January 2008 to 31 December 2012. 15
- “(2) Despite anything in this Act, if this section applies a person may satisfy the person’s obligation to surrender or reimburse units by,— 20
- “(a) in the case of a person other than the chief executive,—
- “(i) surrendering the units in accordance with section 65(4), 118(5), 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 into a Crown bank account by the date or within the period by which the units were required to be surrendered; or 25
- “(iii) a combination of—
- “(A) surrendering units in accordance with sections 65(4), 118(5), 187, 189(8), **191, or 193** as applicable; and 30
- “(B) paying a sum of \$25 for each unit that the person is liable to surrender, but has not or will not surrender in accordance with **sub-subparagraph (A)**, into a Crown bank account by the date or within the period by which the units were required to be surrendered; or 35

- “(b) in the case of the chief executive,—
 - “(i) reimbursing a person with units 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. 5
 - “(3) For the purposes of **subsection (2)(a)(ii) and (iii)(B)**,—
 - “(a) a person’s obligation to surrender units is only satisfied when the funds paid into a Crown bank account are cleared; and
 - “(b) for the purpose of this subsection and **section 222D(1)**, 10 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.
- “**222D Issuance of New Zealand units to meet person’s obligation** 15
- “(1) If, in accordance with **section 222C(2)(a)(ii) or (iii)(B)**, 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,— 20
 - “(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; and
 - “(b) transfer the New Zealand units into the person’s holding account held for the purpose of section 61(1); and 25
 - “(c) immediately following the transfer under **paragraph (b)**, transfer the New Zealand units to a surrender account designated by the chief executive.
- “(2) The Registrar may, for the purposes of **subsection (1)(a)**, issue a number of New Zealand units equal to the number of 30 units in respect of which 1 or more persons have paid a sum of \$25 under **section 222C(2)(a)(ii) or (iii)(B)**.
- “(3) If the chief executive is required to reimburse a person units under section 123(4) or 189(7)(d), and has satisfied his or her obligation to do so by paying to the person a sum of 35 \$25 for some or all of the units in accordance with **section 222C(2)(b)(ii)**, 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 chief executive paid the person a sum of \$25; and 5
 - “(b) immediately following the transfer under **paragraph (a)**, transfer the New Zealand units to a cancellation account.
- “(4) For the avoidance of doubt, **section 69** does not apply in respect of any New Zealand units issued under this section. 10

- “**222E Transitional provisions regarding liability to surrender units to cover emissions**
- “(1) Despite anything in section 18CA(4), a New Zealand unit that is transferred to a surrender account under **section 222D(1)(c)** may be further transferred in accordance with **section 222D(3)(a)**. 15
- “(2) In the period from the date this section comes into force until 31 January 2014, the information made accessible by search of the unit register in accordance with section 27(2)(c) must include— 20
 - “(a) the total quantity of New Zealand units issued during the relevant year; and
 - “(b) the total quantity of New Zealand units issued under **section 69** in that year; and
 - “(c) the total quantity of New Zealand units issued under **section 222D** in that year. 25
- “(3) In the period from the date this section comes into force until 30 June 2013, the chief executive must publish, in accordance with section 89(2),— 30
 - “(a) the total sum of money paid to a Crown bank account in accordance with **section 222C(2)(a)(ii) or (iii)(B)**; and
 - “(b) the total sum of money paid by the chief executive in accordance with **section 222C(2)(b)(ii)**.

- “**222F Transitional provisions for allocation to industry** 35
- Despite anything in this Act,—

- “(a) a person who carries out an eligible industrial activity in the period 1 July 2010 to 31 December 2010 may apply for a provisional allocation for that period under **section 86A**:
- “(b) an application referred to in **paragraph (a)** must be made in the period from the date regulations prescribing the activity as an eligible industrial activity are notified in the *Gazette* under **section 161A** to the date that is 4 months after the date of their notification in the *Gazette*:
- “(c) for allocation in the period 1 July 2010 to 31 December 2010, the variable OSY in **section 82** must represent the basis for allocation expressed in metric units associated with production from the activity in the period 1 January 2009 to 31 December 2009 divided by 4:
- “(d) the number of New Zealand units allocated to any person in respect of an eligible industrial activity carried out by the person in the period 1 January 2011 to 31 December 2012 must be 50% of the number calculated using the formula in **sections 82, 84, or 85A**.
- “**222G Transitional provisions regarding prohibition on ability to export New Zealand units**
- “(1) Despite anything in this Act, during the period 1 July 2010 to 31 May 2013,—
- “(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) received in respect of removals for an activity in Part 1 of Schedule 4; or

“(b) transferred following a determination of the Minister under **sections 78 or 79** in accordance with an allocation plan providing for the matters in **section 73**.”

62 Section 223 repealed
Section 223 is repealed.

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63 New section 225 inserted
The following section is inserted after section 224:

“225 Regulations relating to targets

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister responsible for administration of this Act, make regulations providing for the setting of a target. 10

“(2) The Minister responsible for the administration of this Act—

“(a) must review the target following publication of any Intergovernmental Panel on Climate Change Assessment Report or reports of an successor agency; and 15

“(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 reports of an successor agency: 20

“(ii) any other matters the Minister considers relevant.

“(3) To avoid doubt, any number of targets may be set using the process under this section.” 25

64 Schedule 3 amended

(1) The shoulder references for Schedule 3 are omitted and the following substituted:

“ss 2A, 4(1), 18CC, 18CD, 30F, 54 to 56, 59, 60, 62, 63, 65, 67, 68, 89, 92, 107, 118, 129, 150, 157, 158, 160, 161A, 163, 168, 180 to 182, 186, 187, 196, 198, 201, 202, 204 to 207, 213, 214, 216 to 219, 221, 222A, 222C”. 30

(2) Part 3 of Schedule 3 is amended by adding the following item:

“Combusting solid biofuel for the purpose of generating electricity or industrial heat.” 35

- (3) Part 4 of Schedule 3 is amended by omitting “Producing cable using a nitrogen cure process.”
- (4) Subpart 2 of Part 5 of Schedule 3 is amended by inserting “for application to land” after “nitrogen”.
- (5) Subpart 3 of Part 5 of Schedule 3 is amended by adding the following items:
“Exporting from New Zealand live cattle, sheep, or pigs in accordance with an animal welfare export certificate.
“Producing eggs by a person who is the operator of a risk management programme registered under the Animal Products Act 1999.”

65 Schedule 4 amended

- (1) The shoulder references for Schedule 4 are omitted and the following substituted:
“ss 2A, 4(1), 18CC, 18CD, 54, 57, 59, 62, 63, 65 to 67, 89, 92, 107, 118, 143, 150, 154, 157, 160 to 163, 167, 168, 182, 187 to 193, 197 to 202, 208, 217, 219 to 221, 222A to 222C, 222G”.
- (2) Part 5 of Schedule 4 is repealed.

Part 2

20

Consequential amendments

66 Amendment to Climate Change (Unit Register) Regulations 2008

- (1) This section amends the Climate Change (Unit Register) Regulations 2008.
- (2) The definition of **Crown holding account** in regulation 3 is revoked.
- (3) Regulation 6 is revoked and the following regulation substituted:
“6 Holding accounts may be held jointly
“(1) A holding account may be held jointly by—
“(a) 2 or more persons if each person is a qualified person;
or
“(b) persons who are members of an unincorporated body.

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- “(2) Each person who holds or held a holding account jointly is jointly and severally liable, in respect of the period or any part of the period during which the person holds or held the account jointly, for any matter arising with respect to the account.
- “(3) In the case of a holding account held jointly, any declaration that must be signed by an account holder under these regulations must be signed by each person who holds the holding account jointly. 5
- “(4) In the case of a proposed holding account to be held jointly, any declaration that must be signed by the proposed account holder under these regulations must be signed by each person who proposes to hold the holding account jointly. 10
- “(5) If an account holder or proposed account holder is an unincorporated body, then—
- “(a) the unincorporated body’s full legal name for the purposes of regulation 4(2)(b)(i) is the name of the unincorporated body as entered on the register kept for the purposes of section 56 or 57 of the Act (as applicable); and 15
- “(b) if the Registrar receives notification under **section 157A(2)(b)(ii)** of the Act of a change in membership of the unincorporated body, the Registrar must update the his or her account holder records to reflect the change in membership. 20
- “(6) If a holding account is held jointly other than by members of an unincorporated body, and a person who is an account holder wishes to be removed as an account holder or a person wishes to be added as an account holder, then— 25
- “(a) the account holder may submit a request to the Registrar to add or remove the person as an account holder; and 30
- “(b) for the purposes of **paragraph (a)**, the account holder must provide—
- “(i) the name of the holding account; and
- “(ii) the account number; and
- “(iii) the name and contact details of the person being added or removed; and 35
- “(c) the Registrar may not add or remove the person as an account holder unless the Registrar has received a declaration signed by the account holder that contains a state-

ment that the account holder authorises the addition or
removal of the person as an account holder.

- “(7) If an unincorporated body ceases to be a participant, the mem-
bers of the unincorporated body may submit a request to the
Registrar to convert the unincorporated body’s holding ac- 5
count into a holding account held jointly by the members using
the procedure in regulation 4, and that regulation applies with
all necessary modifications.
- “(8) For the purposes of this regulation, **member** and **unincorpor-**
ated body have the same meanings as in **section 157(7)** of 10
the Act.”
-