

Departmental Disclosure Statement

Climate Change Response (Removal of Transitional Measure) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22 April 2016

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Part One: General Policy Statement

The purpose of this Bill is to phase out the transitional one-for-two surrender obligation measure (one-for-two) from the New Zealand Emissions Trading Scheme (NZ ETS). One-for-two allows non-forestry participants in the NZ ETS to submit only one emissions unit for every two tonnes of carbon dioxide equivalent of greenhouse gas (GHG) emissions. It was introduced as a transitional measure in 2009 to moderate the initial impacts of the NZ ETS on businesses and the economy. It was extended in 2012 while New Zealand continued to recover from the global financial crisis.

Removing one-for-two seeks to improve the ability of the NZ ETS to fulfil its statutory purpose of helping New Zealand meet its international obligations and reduce net emissions below business-as-usual levels. It will better align the NZ ETS with the intended emissions reduction target for 2030 that New Zealand has announced under the Paris Agreement. This will reduce a potential fiscal risk to the Crown in the 2020s associated with meeting this target and more effectively influence business decisions to reduce emissions.

One-for-two is reflected throughout the Climate Change Response Act 2002 (the Act) in several ways—

- (a) The surrender obligation for participants from the liquid fossil fuel, stationary energy, industrial processes, and waste sectors is halved. Forestry is the only sector that has a full surrender obligation to surrender one unit for every one tonne of emissions.
- (b) Free allocations of units for industrial activities are calculated based on the halved surrender obligation. Free allocations for the agricultural sector would also be halved if the agriculture sector faced a surrender obligation.
- (c) Entitlements for non-forestry removal activities (eg, embedding GHGs in products or exporting products containing certain GHGs) are halved, based on the halved surrender obligation.
- (d) The synthetic greenhouse gas levy rate is calculated based on the halved surrender obligation.

The Bill will remove one-for-two from the above elements of the Act in a phased manner from 1 January 2017, increasing surrender obligations in equal steps until full obligations are reached in January 2019. This gradual phase out is intended to manage the costs and impacts of this change on businesses and households.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The New Zealand Emissions Trading Scheme Evaluation 2016 Ministry for the Environment, February 2016 https://www.mfe.govt.nz/publications/climate-change/new-zealand-emissions-trading-scheme-evaluation-report-2016</p> <p>Afforestation responses to carbon price changes and market certainties Professor Bruce Manley, NZ School of Forestry, University of Canterbury, January 2016 https://www.mfe.govt.nz/publications/climate-change/afforestation-responses-carbon-price-changes-and-market-certainties</p> <p>Economic impacts of removing NZ ETS transitional measures: A Computable General Equilibrium analysis NZIER, December 2015 http://www.mfe.govt.nz/publications/climate-change/economic-impacts-removing-nz-ets-transitional-measures</p> <p>New Zealand Emissions Trading Scheme Review 2015/16: Summary of stage one: priority issues consultation responses Ministry for the Environment, April 2016 http://www.mfe.govt.nz/publication-search</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A Regulatory Impact Statement (RIS) was prepared by the Ministry for the Environment (MfE): <i>Improving alignment of the New Zealand Emissions Trading Scheme with New Zealand's provisional 2030 emissions reduction target</i> (23 March 2016).</p> <p>The RIS will be available on the Treasury's website and MfE's climate change website after the Bill is introduced. Note that some content in the RIS may be withheld.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES

On 22 March 2016, the RIA Team reviewed the RIS in accordance with the quality assurance criteria set out in the CabGuide and provided the following assessment:

“The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

The Regulatory Impact Analysis Team at the Treasury (RIAT) understands that the version it has seen is close to final. On this basis RIAT has reviewed the RIS and prepared by the Ministry for the Environment and considers that the RIS meets the quality assurance criteria.

The initial problems identified for action (resulting from officials’ analysis of the ETS) are comprehensively explained, and the analysis is methodical and thorough within the constraints set by earlier Government decisions. Risks and downsides, including the lack of full consensus from the extensive consultation undertaken, are acknowledged.

RIAT notes the intention to develop a comprehensive monitoring and evaluation framework for the NZ ETS. Given the substantial uncertainties described it will be important to keep the performance of the regime under close review.”

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?

NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?

NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:

(a) the size of the potential costs and benefits?

YES

(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?

YES

(a) Analysis of the potential costs and benefits of the policy proposal are outlined in the ‘Improving alignment of the New Zealand Emissions Trading Scheme with New Zealand’s provisional 2030 emissions reduction target’ RIS on page 19-22 and 29-32.

(b) Analysis of the potential for any substantial unavoidable loss of income is also provided in the RIS and can be found on pages 22-24.

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:

(a) the level of effective compliance or non-compliance with applicable obligations or standards?

YES

(b) the nature and level of regulator effort put into encouraging or securing compliance?

YES

An outline of the implementation plan for this policy can be found on page 37 of the RIS, and further comment on compliance issues is provided below.

- (a) There is currently a low level of deliberate non-compliance by NZ ETS participants. This Bill will increase the surrender obligations for non-forestry participants of the NZ ETS. There is also likely to be a second order effect of increasing carbon prices due to the increase in demand for carbon units. This increase in carbon prices changes the costs and benefits for participants (both forestry and non-forestry) and allocation recipients in the NZ ETS and may cause an increase in the level of non-compliance with the Act's requirements. However, any reduction in the benefits from this increased non-compliance are expected to be small, taking into account the broad compliance and enforcement powers in the applicable legislation that support the compliance programmes undertaken by the Ministry for Primary Industries and the Environmental Protection Authority (see below for further comment),
- (b) The EPA and MPI manage the administration of the NZ ETS in relation to participants' unit obligations and entitlements under the Act, including participants' compliance obligations to surrender units. The EPA also administers the New Zealand Emission Unit Register for all participants. The NZ ETS is based on a self-assessment approach, so participants are responsible for measuring and reporting their own emissions. The EPA and MPI undertake targeted reviews of emissions reporting by participants, allocation applications, undertake compliance activities and also have the power to require information in support of these activities. The policy to be given effect by this Bill is not expected to introduce significant additional compliance work for the EPA and MPI, which will continue with their existing targeted compliance programmes and will adapt the programmes as necessary to reflect that moving to full surrender obligations may increase risks of non-compliance.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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MfE has consulted with the Ministry of Foreign Affairs and Trade (MFAT) to ensure the Bill is consistent with New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The principles of the Treaty of Waitangi have been considered at all stages in the development of this Bill.
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Māori have broad interests in the primary sector, which may be impacted by changes to the NZ ETS, including in dairy farming and forestry. Māori/iwi were consulted throughout the policy development stages, including six regional hui which were co-hosted with the Climate Change Iwi Leaders Group (CCILG).
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Te Puni Kōkiri (TPK) has also been informed throughout the policy development process.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Public consultation on moving to full surrender obligations in the NZ ETS, i.e. the removal of the one-for-two transitional measure and how to manage costs, took place from 24 November 2015 to 19 February 2016. The consultation consisted of a written discussion document, targeted stakeholder meetings and analysis of written submissions.</p> <p>Overall the majority of submitters were supportive of removing the one-for-two transitional measure. 278 written submissions were received, with 76% of the submissions supportive of removing the one-for-two transitional measure.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>MfE and EPA are confident that the policy details given effect to by the Bill are complete and their current systems can be modified to be give effect to the policy.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>This Bill will increase the surrender obligation for non-forestry participants and the synthetic greenhouse gas levy. Currently, transitional sections 63A and 235A modify the surrender obligation and the levy calculation, effectively halving the obligation to surrender units or pay the levy. Both will increase in equal steps from 2017 until full obligations are reached on 1 January 2019 at which time the relevant sections will be repealed.</p> <p>The move to full surrender obligations will better fulfil the statutory purpose of the NZ ETS, which is to help New Zealand meet its international obligations and reduce net emissions below business as usual levels. Our intended 2030 target is on a one for one basis, so having participants also face a one for one obligation will better align the NZ ETS with the target. The amendments will also mean emitters are facing the full cost of their emissions, which will more effectively influence business decisions to reduce emissions.</p> <p>Both the levy and the obligation are limited to \$25 per tonne of emissions. This applies to the surrender obligation through a fixed price option where participants can pay \$25 to the Government for each emissions unit required to be surrendered. The Act also restricts the maximum price of carbon for the purpose of the levy to \$25.</p> <p>This Bill does not affect who is required to surrender units in the NZ ETS or who is required to pay the levy. The Bill does not affect how units are surrendered, or how payments are made. Units will continue to be surrendered into the Crown's Surrender Account in the New Zealand Emissions Unit Register. These units are used for the purposes of meeting New Zealand's international emissions reduction targets. Levy payments will continue to be included in the Crown's Consolidated Fund.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
Powers in sections 84A and 235 to repeal the sections by Order in Council have been removed from and replaced with finite repeal dates	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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