

Departmental Disclosure Statement

Climate Change Response (Emissions Trading Reform) Amendment Bill

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 and the Ministry for Primary Industries.

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.

19 September 2019.

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Part One: General Policy Statement

The New Zealand Emissions Trading Scheme (NZ ETS) is New Zealand's main tool for reducing greenhouse gas emissions, but is not currently being used to its full potential.

Most of the changes to be introduced by the Bill result from a review of the NZ ETS undertaken in 2015/16, and the outcomes of public consultation undertaken in 2018. These changes will enable the NZ ETS to drive emissions reductions and help New Zealand reach its domestic and international climate change targets. The changes will improve certainty for businesses, make the scheme more accessible, and improve its administration. The proposals to introduce pricing for agricultural emissions were consulted publicly in July-August 2019.

The Bill will amend the Climate Change Response Act 2002 (CCRA). Key changes that the Bill will make include:

Updating the purpose of the CCRA

The Bill will update the purpose of the CCRA to support implementation of New Zealand's international climate commitments under the Paris Agreement and domestic targets and emissions budgets, to be set under the Climate Change Response (Zero Carbon) Amendment Bill.

Enabling a cap on emissions covered by the NZ ETS

The Bill will introduce a decision-making framework to enable the supply of New Zealand Units (NZUs) to be restricted, capping allowable emissions.

The Government will make and announce unit supply decisions on a rolling five-year basis. For any given year an overall limit on the number of units supplied into the scheme will be prescribed, comprising units to be auctioned and units to be freely allocated to emission-intensive and trade-exposed industries.

Regulations will set the overall limit for each year, extending out five years. Every year this must be extended by a further year.

Allowing for a cost containment reserve

The Bill will remove the current \$25 fixed price option and replace it with a cost containment reserve which will operate through NZ ETS auctions. This will be a limited reserve supply of NZUs that the Government will release only when NZU prices reach a particular level (termed the "trigger level"). Regulations will set the trigger level, or levels, and the number of units to be released when the trigger(s) are met.

The cost containment reserve will increase the capability of the Government to manage the supply of units.

Introducing robust and transparent auctions

The CCRA already provides for the auctioning of NZUs. The Bill will set out the types of decisions that the Climate Change Minister will need to make when recommending that auctioning regulations are made. The Bill also provides for regulations to be made to appoint an auction monitor. The monitor will ensure that auctions are run fairly by providing independent oversight of auctions.

Auctions are expected to begin in late 2020.

A phase-down of industrial allocation

The Bill will mandate a phase-down of all industrial allocation from 2021. Allocations are determined by a level of allocation currently specified in the Act as either 0.9 or 0.6 for each eligible activity. The Bill will reduce the level of allocation for every activity by 0.01 each year from 2021-30, with greater reductions after 2030.

The Climate Change Commission will be able to recommend that reductions after 2030 are slowed if there is still a risk of emissions leakage. The Bill will also establish a process which may set more rapid phase-downs for particular activities that are at low risk of emissions leakage.

Strengthened compliance regime

The Bill will introduce new infringement offences for low-level offending. This will encourage participants to comply whilst reducing the cost of compliance actions.

The Bill will also separate the excess emissions penalty into two:

- A penalty for failure to surrender or repay units, set at three times the current price of carbon
- Penalties for failure to report emissions or make mandatory allocation applications, or reporting/applying for allocations inaccurately.

Information about significant non-compliance will be made publicly available.

A transparent scheme

Data on the emissions and removals of individual businesses will be made publicly available online. This will build trust in the scheme and enable market analysts and researchers to form a more complete picture of New Zealand's greenhouse gas emissions.

ETS-wide operational and technical improvements

The Bill makes a number of operational and technical improvements. These include changes that will remove redundant references to the Kyoto Protocol, allow easier correction of errors, and resolve a number of minor administrative issues.

The Bill will also provide for legacy Kyoto Protocol emission units in private accounts to be cancelled.

Averaging accounting for post-1989 forests registered from 1 January 2019

The Bill will introduce averaging accounting to the NZ ETS for post-1989 forests. Averaging accounting will be optional for forests registered from 1 January 2019, and mandatory from 1 January 2021. Post-1989 forests registered before 1 January 2019 will stay on the existing stock change accounting approach.

Averaging accounting means that forest owners will earn units up until their forest has reached an age equivalent to its long-term average level of carbon storage. This will be administratively simpler, and will increase the number of units that forest owners can

trade at low risk, encouraging them to plant new forests. Increased rates of afforestation will help New Zealand meet its emission reduction targets.

The Bill will add three other major provisions for post-1989 forestry under averaging:

- Removing liabilities for carbon lost from adverse events, as long as the forest is replanted.
- Enabling the offset of liabilities by planting a carbon-equivalent forest elsewhere.
- Closing a loophole which could allow foresters to deforest and re-register land in order to game the averaging provisions.

Introducing a new permanent forest activity into the NZ ETS

The Bill will disestablish the existing Permanent Forest Sink Initiative, and replace it with a new permanent post-1989 forest activity in the NZ ETS. Participants will be restricted from clear-fell harvesting for 50 years. The new activity will reduce administrative costs, making this option more viable for landowners. Permanent post-1989 forests will use stock change accounting and will not be eligible to use averaging accounting.

Operational and technical improvements for forestry

The Bill introduces a large package of operational and technical forestry changes which will reduce operational complexity and encourage establishment of new forests, particularly by small forest owners and farm foresters. They include measures to simplify rules and improve access for forest owners, including Māori landowners, measures to improve compliance rates, and other minor and technical changes.

A price on agricultural emissions from 2025

The Bill gives effect to decisions to price agricultural livestock emissions at farm level, and fertiliser emissions at processor level, from 2025.

It will require the Minister for Climate Change and Minister of Agriculture to report back on the development of an alternative farm-level pricing mechanism in 2022. In the meantime, it uses the NZ ETS as a fall-back option for emissions pricing.

The Bill will apply farm-level surrender obligations on livestock emissions and processor-level surrender obligations on fertiliser emissions in the NZ ETS, for emissions from the year beginning 1 January 2025. Mandatory reporting obligations on livestock emissions will apply at farm level for emissions from the year beginning 1 January 2024.

To reflect the Labour-New Zealand First Coalition Agreement, the Bill will amend the existing level of free allocation to agriculture in the CCRA from 90 per cent to 95 per cent.

Some of the more detailed provisions to support decisions on the interim period to 2025 have not been included in the Bill on introduction. Those detailed provisions, among other policy decisions on agriculture, including the requirement to develop (in 2022) an alternative farm-level livestock emissions pricing mechanism, will be incorporated into the Bill through draft text provided to select committee or via a supplementary order paper.

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 following reports are relevant to the policy given effect to by this Bill:</p> <ul style="list-style-type: none"> • Ministry for the Environment, <i>The New Zealand Emissions Trading Scheme Evaluation 2016</i>, February 2016 (https://www.mfe.govt.nz/publications/climate-change/new-zealand-emissions-trading-scheme-evaluation-report-2016) • Ministry for the Environment, <i>New Zealand Emissions Trading Scheme Review: Improving the ETS Framework</i>, July 2017 (https://www.mfe.govt.nz/node/23492) • Ministry for the Environment, <i>New Zealand Emissions Trading Scheme Review 2015/16: Operational Matters Technical Note</i>, March 2016 (https://www.mfe.govt.nz/publications/climate-change/operational-matters-technical-note) • Ministry for the Environment, <i>New Zealand Emissions Trading Scheme Review 2015/16: Forestry Technical Note</i>, March 2016 (https://www.mfe.govt.nz/publications/climate-change/forestry-technical-note) • New Zealand Productivity Commission, <i>Low-emissions Economy</i>, August 2018 (https://www.productivity.govt.nz/inquiry-content/3254?stage=4) • Bruce Manley, <i>Afforestation responses to carbon price changes and market certainties</i>, 2016 (https://www.mfe.govt.nz/publications/climate-change/afforestation-responses-carbon-price-changes-and-market-certainties) • Bruce Manley, <i>Potential impacts of NZ ETS accounting rule changes for forestry – averaging and harvested wood products</i>, 2017. https://www.teururakau.govt.nz/news-and-resources/consultations/a-better-ets-for-forestry/ • Ministry for Primary Industries, <i>Valuing the Benefits of Forests</i>, October 2017 (https://www.mpi.govt.nz/dmsdocument/26302/send) • Bruce Manley, <i>Impacts of carbon prices on forest management</i>, 2018. https://www.teururakau.govt.nz/news-and-resources/consultations/a-better-ets-for-forestry/ • Ministry for Primary Industries, <i>Permanent Forest Sink Initiative Proposed Changes to Unit Type and First Stage of a Review of the Operation of the Scheme</i>, May 2013 (https://www.mpi.govt.nz/dmsdocument/122-proposed-changes-to-unit-type-and-first-stage-of-a-review-of-the-operation-of-the-scheme-pfsi) • PWC, <i>Cost-Benefit Analysis: Permanent Forestry and Operational Improvements</i>, February 2019, https://www.mpi.govt.nz/dmsdocument/36582-pwc-mpi-permanent-forestry-and-operational-improvements-cost-benefit-analysis • Interim Climate Change Committee, <i>Action on Agricultural Emissions: Evidence, analysis and recommendations</i>, April 2019 (https://www.iccc.mfe.govt.nz/assets/PDF_Library/f15921453c/FINAL-ICCC-Agriculture-Report.pdf) 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The following three treaties are relevant:</p> <ul style="list-style-type: none"> • Paris Agreement under the United Nations Framework Convention for Climate Change. The agreement can be accessed at: https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement 	

<ul style="list-style-type: none"> • Kyoto Protocol to the United Nations Framework Convention for Climate Change. It can be accessed at: https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/what-is-the-kyoto-protocol • United Nations Framework Convention for Climate Change. It can be accessed at: https://unfccc.int/process/convention/history-convention/convention-documents <p>The Bill seeks to support implementation of New Zealand's commitments under the Paris Agreement. It also removes some elements of New Zealand's response to the Kyoto Protocol which are now outdated.</p>
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>The New Zealand Parliament published a National Interest Analysis on the Paris Agreement in August 2016. This document can be accessed here: https://www.parliament.nz/en/pb/papers-presented/current-papers/document/51DBHOH_PAP69732_1/paris-agreement-together-with-the-national-interest-analysis</p> <p>A National Interest Analysis was completed in 2002 as part of the ratification process for the Kyoto Protocol but is only available in print.</p> <p>A Cabinet Paper was completed in the early 1990s prior to ratification of the United Nations Framework Convention on Climate Change; however there was no requirement at this time to complete a National Interest Analysis.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A number of impact statements were prepared to inform the policy decisions that led to this Bill. They are listed below, with links provided.</p> <p><u>Non-forestry impact statements</u></p> <p><i>Unit supply and price controls</i></p> <ul style="list-style-type: none"> • Improving the NZ ETS Framework for Unit Supply: https://www.mfe.govt.nz/node/25034 • Enabling a Price Floor in the NZ ETS: https://www.mfe.govt.nz/node/25154 <p><i>Auctioning</i></p> <ul style="list-style-type: none"> • High-level Design of an Auction System for the NZ ETS: https://www.mfe.govt.nz/node/25035 • Providing Clarity for Auctions in the NZ ETS: https://www.mfe.govt.nz/node/25151 • Options for NZ ETS Auction Oversight, Including an Auction Monitor: https://www.mfe.govt.nz/node/25152 <p><i>Compliance and transparency</i></p> <ul style="list-style-type: none"> • NZ ETS Compliance and Penalties – Infringement Offences: https://www.mfe.govt.nz/node/25036 • NZ ETS Tranche Two: Improving Compliance and Penalties: https://www.mfe.govt.nz/node/25155 • NZ ETS Tranche Two: Improving Transparency https://www.mfe.govt.nz/node/25193 <p><i>Industrial allocation</i></p> <ul style="list-style-type: none"> • NZ ETS Tranche Two: A Phase-Down of Industrial Allocation 	

<https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/nz-ets-tranche-two-phase-down-of>

Operational and technical

- NZ ETS Improvements – Amending Unique Emissions Factor Errors: <https://www.mfe.govt.nz/node/25038>
- NZ ETS Improvements – Sale of Coal from Stockpiles: <https://www.mfe.govt.nz/node/25042>
- NZ ETS Improvements – Industrial Allocation for Consolidated Groups: <https://www.mfe.govt.nz/node/25039>
- NZ ETS Improvements – Receiving Emission Units where there are Overdue Obligations: <https://www.mfe.govt.nz/node/25040>
- NZ ETS Improvements – Issues with the Companies Act: <https://www.mfe.govt.nz/node/25037>
- NZ ETS Improvements – Repayment of Units Received: <https://www.mfe.govt.nz/node/25041>

Forestry impact statements

- Emissions Trading Scheme Forestry Accounting Proposals: <https://www.mpi.govt.nz/dmsdocument/36546/direct>
- Consultation Impact Summary: <https://www.teururakau.govt.nz/dmsdocument/30254-appendix-two-impact-summary-for-the-ets-forestry-package-2018>
- Climate Change Response Act 2002: Permanent Forests and Operational Improvements <https://www.teururakau.govt.nz/dmsdocument/36561-climate-change-response-act-2002-permanent-forests-and-operational-improvements-regulatory-impact-statement>
- Climate Change Response Act 2002: Forestry Sector Operational Improvements (Part 2) <https://www.teururakau.govt.nz/dmsdocument/36573-climate-change-response-act-2002-forestry-sector-operational-improvements-part-2-ris>

Agricultural emissions pricing impact statement

- Reducing greenhouse gas emissions from the agriculture sector: <https://www.mfe.govt.nz/ris/reducing-greenhouse-gas-emissions-agriculture>

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
<p>Each impact statement was reviewed by a Quality Assurance Panel comprised of representatives from the Ministry for the Environment and/or the Ministry for Primary Industries, and from Treasury’s Regulatory Quality Team. With one exception, all impact statements either met or partially met the Quality Assurance criteria.</p> <p>Opinions were provided on the impact statements listed below.</p> <p>On the tranche one impact statements, with particular reference to the statement <i>High-Level Design of an Auctioning System for the NZ ETS</i>:</p> <p>The panel considers that the ‘auctioning’ RIA partially meets the quality assurance criteria. The other nine RIAs meet the Quality Assurance criteria. Although the RIAs are not always easy to read, this is largely due to the nature of the proposals which are often technical or, in the case of the ‘unit supply’ RIA, complex and lengthy. All of the RIAs canvass a wide range of options and the analysis is generally robust. The proposals have generally been well consulted and the feedback from stakeholders is reflected in the analysis. The Panel assessed the ‘auctioning’ RIA as partially meets primarily because the analysis was not always complete and some key</p>	

parts were hard to understand, including how bid shading happens and how uniform pricing reduces the risk of hoarding. We also did not think the reasons for rejecting the descending clock option early in the analysis were convincing. However, the RIA notes other auction types are generally favoured internationally, so we suspect there are good reasons why the descending clock can be safely disregarded.

On the impact statement *Providing Clarity for Auctions in the NZ ETS*:

The only matter the Panel highlights is that, while the problems were consulted on, the proposals were not. The proposals appear to be low cost and low risk. The proposals will also be subject to further analysis and consultation as detail is considered when regulations are made. It will nevertheless be important to explore the proposals with submitters at Select Committee.

On the impact statement *Enabling Future Price Controls*:

The Panel considers that the RIA meets the Quality Assurance criteria. The Panel notes that while the nature of the policy area means that the analysis can be complex, the analysis is sound.

On the impact statement *Improving Transparency*:

While the RIA describes the relative benefits and costs of each option well, it is hard to be confident about the size of those benefits and costs. There is a clear rationale for more information being published, in particular for public companies and other large emitters. However, there may be some firms who face particular costs from disclosure (e.g. new firms opting to keep commercial information private during start-up years as they establish themselves). The RIA suggests information publication has not generated significant concern overseas, but there was limited feedback during consultation on this aspect of the NZ ETS proposals. It will be important to explore this with submitters at Select Committee. The RIA also notes that there is work underway responding to Productivity Commission recommendations in a related area. The Panel wonders whether there might be value in an enabling option – that is, information publication might be as detailed as in the RIA's preferred option, but with the final decisions made in regulation after the Productivity Commission work is completed.

On the impact assessment *Emissions Trading Scheme Forestry Accounting Proposals*:

The Quality Assurance Panel considers that this meets the Quality Assurance criteria. The problem is highly complex; however, it is clearly and thoroughly outlined. The RIA presents a sound evidence-based case, particularly in relation to the benefits of averaging accounting for NZ ETS participants with rotational forests, who will benefit most from the changes proposed in this RIA. A strong case is also made to address the misalignment between NZ ETS and international climate change accounting rules to help ensure the Crown is better able to meet its international climate change targets. We understand that further analysis of some of the detailed design features will be undertaken in the next RIA. Close monitoring will be required because there is some uncertainty around how landowners will respond, which could impact the estimated increase in afforestation levels. Some NZ ETS participants will have good business reasons to choose to remain on stock change accounting, and will continue to navigate some of the complexities of the existing NZ ETS system. Ongoing monitoring can help identify if and how the changes impact on these NZ ETS participants.

On the impact assessment *Climate Change Response Act 2002: Permanent Forests and Operational Improvements*

A quality assurance panel with representatives from the regulatory quality team at the Treasury, Ministry for the Environment, and the Ministry for Primary Industries has reviewed the regulatory impact assessment “CCRA 2002: Permanent Forests and Operational Improvement” produced by Te Uru Rākau and dated 21 November 2018. The Quality Assurance panel considers that it partially meets the Quality Assurance Criteria.

The RIA is very technical and the presentation could have been tightened to make the content clearer and concise. However, the problem definition and opportunity are clear, the proposal has been well consulted and the feedback from stakeholders is reflected in the analysis. The RIA acknowledges that the extent to which the potential benefits are realised is dependent on the uptake of the activity, which is uncertain. It will be important to develop a detailed implementation and monitoring plan.

On the impact assessment *Climate Change Response Act 2002: Forestry Sector Operational Improvements (Part 2)*

The Quality Assurance panel considers that this partially meets the Quality Assurance criteria. The problem definition and opportunity are clear and the proposals reflect public consultation and the Ministry for Primary Industries' operational experience in implementing the NZ ETS. The RIA is technically detailed and the presentation could have been tightened to make the content clearer and concise. Although two proposals have not been formally consulted on because the issues were identified during and after the consultation period, they have been adapted based on submissions and informal industry feedback.

The RIA provides a good rationale for the ability to enable a mapping tool and further work is required to decide on the appropriate mapping detail and to quantify the costs more accurately. The analysis indicates that the extent to which the potential benefits are realised is dependent on the uptake of the activity, which is uncertain.

On the impact assessment *Reducing greenhouse gas emissions from the agriculture sector:*

This Regulatory Impact Assessment (RIA) was reviewed by a Quality Assurance Panel comprising representatives from the Ministry for Primary Industries, Ministry for the Environment, and the Treasury Regulatory Quality Team.

The Panel considers that the RIA meets Cabinet's Quality Assurance criteria.

As a part of its assessment, the Panel also considered the Interim Climate Change Committee's report, Landcare Research's modelling report prepared for the Ministry for Primary Industries, a supplementary cost-benefit analysis done by the Ministry for the Environment, and a selection of stakeholder submissions.

The Panel notes that while the nature of the policy area means that the analysis can be complex, the analysis is sound.

The Panel considers the summary section of the RIA should have included more discussion of the potential net benefits of options for a farm-level scheme. Analysis of this is covered in the Committee's report and Landcare Research's modelling, and in the RIA's multi-criteria analysis, but a clear upfront summary would have aided clarity and improved confidence in the potential of a farm-level scheme. The potential viability of a farm-level scheme is an important element in deciding whether to have an interim scheme.

Notwithstanding the consultation the Interim Committee had already undertaken, the Panel notes that the four weeks' consultation period was unusually short. While comprehensive submissions were provided by a wide range of organised interest groups, the short period would have inhibited submissions from some individuals. It will be important for officials to consult further during implementation of the interim approach, whether this is the processor-level scheme or the industry agreement. Consultation will also be key to understanding the impacts of the farm-level scheme.

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?

YES

Omission of prohibition of insider trading and market manipulation

In December 2018, Cabinet agreed in-principle to prohibit insider trading and market manipulation in the NZ ETS market, subject to final decisions on the broader market governance framework. An impact statement had been prepared on insider trading and market manipulation to inform this Cabinet decision.

Then in May 2019, Cabinet agreed that the Ministry for the Environment would work with the Ministries for Primary Industries and Business, Innovation and Employment to prepare a broad, coherent market governance package to address all identified market governance risks.

The December 2018 decisions on insider trading and market manipulation will now be included in this new work programme and are not addressed in this Bill.

Decision on the transition to averaging accounting of forests registered prior to 2019

Official advice prepared by MPI recommended that forests registered in the NZ ETS prior to 2019 be made eligible for the transition to averaging accounting as the preferred option. Subsequent joint final advice to Ministers made no recommendation on whether these forests should be eligible to transition. This Bill includes the decision that these forests not be able to transition.

Official advice prepared by MPI recommended that if existing forests registered could not use averaging, then forests planted from 2019 should be eligible to use averaging accounting. This Bill includes the decision that forests registered (not just planted) from 2019 should be eligible.

Minor policy decisions

In the process of drafting this Bill, officials identified a number of additional decisions for Cabinet to take on minor policy matters. These decisions were included in the Cabinet paper for approval to introduce the Bill. The decisions were aligned with the policy intent of the previous Cabinet decisions and did not require further impact analysis or quality assurance.

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?	NO

Size of the potential costs and benefits

The impact statements listed above include analysis on the size of potential costs and benefits connected to the proposals included in this Bill. Page references are provided below.

Unit supply and price controls impact statements

- Improving the NZ ETS Framework for Unit Supply – pp. 34-35, 38-41, 47-50, 57 <https://www.mfe.govt.nz/node/25034>
- Enabling a Price Floor in the NZ ETS – p.10 <https://www.mfe.govt.nz/node/25154>

Auctioning impact statements

- High-level Design of an Auction System for the NZ ETS – pp. 2-4; 21-32 <https://www.mfe.govt.nz/node/25035>
- Providing Clarity for Auctions in the NZ ETS – p.10 <https://www.mfe.govt.nz/node/25151>
- Options for NZ ETS Auction Oversight, Including an Auction Monitor – pp. 6-7, 24-27 <https://www.mfe.govt.nz/node/25152>

Compliance and transparency impact statements

- NZ ETS Compliance and Penalties – Infringement Offences – pp. 2-3, 17-18, 22-24 <https://www.mfe.govt.nz/node/25036>
- NZ ETS Tranche Two: Improving Compliance and Penalties – pp. 3-5, 26-28, 31-33 <https://www.mfe.govt.nz/node/25155>
- NZ ETS Tranche Two: Improving Transparency – pp. 9-11, 15-16 <https://www.mfe.govt.nz/node/25193>

Industrial allocation

- NZ ETS Tranche Two: A Phase-Down of Industrial Allocation <https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/nz-ets-tranche-two-phase-down-of>

Operational and technical impact statements

- NZ ETS Improvements – Amending Unique Emissions Factor Errors – p. 4 <https://www.mfe.govt.nz/node/25038>
- NZ ETS Improvements – Sale of Coal from Stockpiles – p. 5 <https://www.mfe.govt.nz/node/25042>
- NZ ETS Improvements – Industrial Allocation for Consolidated Groups – p. 3 <https://www.mfe.govt.nz/node/25039>
- NZ ETS Improvements – Receiving Emission Units where there are Overdue Obligations – pp. 4-5 <https://www.mfe.govt.nz/node/25040>
- NZ ETS Improvements – Issues with the Companies Act – p. 4 <https://www.mfe.govt.nz/node/25037>
- NZ ETS Improvements – Repayment of Units Received – p. 4 <https://www.mfe.govt.nz/node/25041>

Forestry impact statements

- Emissions Trading Scheme Forestry Accounting Proposals: <https://www.mpi.govt.nz/dmsdocument/36546/direct>
- Consultation impact summary – whole document: <https://www.teururakau.govt.nz/dmsdocument/30254-appendix-two-impact-summary-for-the-ets-forestry-package-2018>
- Climate Change Response Act 2002: Permanent Forests and Operational Improvements pp. 6-8, whole document <https://www.teururakau.govt.nz/dmsdocument/36561-climate-change-response-act-2002-permanent-forests-and-operational-improvements-regulatory-impact-statement>
- Climate Change Response Act 2002: Forestry Sector Operational Improvements (Part 2) pp 5-6, whole document: <https://www.teururakau.govt.nz/dmsdocument/36573-climate-change-response-act-2002-forestry-sector-operational-improvements-part-2-ris>

Additionally, the following cost benefit analyses were conducted:

- Cost–Benefit Analysis: Permanent Forestry and Operational Improvements, February 2019 <https://www.mpi.govt.nz/dmsdocument/36582-pwc-mpi-permanent-forestry-and-operational-improvements-cost-benefit-analysis>
- Emissions Trading Scheme Forestry Accounting Proposals p 5-8: <https://www.mpi.govt.nz/dmsdocument/36546/direct>

Potential for any group to suffer a substantial unavoidable loss of income or wealth

The Bill does not contain specific provisions that could result in a group of people suffering a substantial loss of income or wealth. The impact statements listed above provide estimates of sectoral costs and benefits where this is appropriate and possible.

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
<p>Repeated instances of non-compliance against the NZ ETS, particularly severe non-compliance such as emitters failing to surrender their full liability of emission units, could damage the integrity of the NZ ETS and prevent the scheme reducing emissions.</p> <p>Changes to the compliance regime intend to encourage increased compliance by deterring non-compliance and, in the long-term, freeing up enforcement agents so that they have more time to devote to sanctioning the most serious offending and working proactively with NZ ETS participants to help them comply. The nature of regulator effort will move from considerable effort being expended on fixing emissions returns to focusing on strategic tasks to improve the compliance regime.</p> <p>The impact statements <i>Compliance and Penalties – Infringement Offences and Improving Compliance and Penalties</i> contain further discussion of these issues.</p> <p>The Bill also provides participants with new forestry options to help them be compliant and avoid technical non-compliance. This facilitated compliance approach is expected to reduce the number of non-compliant participants and therefore the need to use the compliance regime.</p> <p>More information can be found in the impact statements Permanent Forests and Operational Improvements in the Emissions Trading Scheme (Part 1) and New Zealand Emissions Trading Scheme: Forestry Sector Operational Improvements (Part 2).</p>	

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?

Consultation has been undertaken with the Ministry of Foreign Affairs and Trade to ensure that New Zealand is giving effect to its international obligations. Giving effect to New Zealand's obligations under climate change treaties is a focus of the existing legislation and of this Bill.

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?

Iwi/Māori have a significant stake in climate change action, and a significant interest in the NZ ETS. Māori have a large economy and asset base sitting largely in the primary industries, as well as Treaty-based rights and interests in natural resource use and management.

The Ministry for the Environment and Ministry for Primary Industries consulted with iwi/Māori as part of the policy development process. A Māori Leaders' Forum was held in Wellington on 17 September 2018 as part of the consultation on improvements to the NZ ETS. This provided an opportunity to build on the existing relationship between the Ministry for the Environment and iwi/Māori, and to have further conversations around the Government's climate change work programme. Discussions covered ways to ensure there are strong processes in place to value iwi/Māori input into policy-making. Feedback from the Forum and ongoing engagement with iwi/Māori will form part of a work programme on climate change responding to the Ministry for the Environment's Te Ao Māori Strategy.

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?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

New surrender/repayment and reporting penalties

The Bill restructures the current penalties that apply when a participant fails to surrender or repay units by the due date into two new types of administrative penalties: a penalty for failure to surrender or repay units, and penalties for incorrect or missing reporting/allocation information.

The penalty for failing to surrender or repay units by the applicable due date is necessary to effectively deter non-compliance against the NZ ETS whilst being easier to understand, more predictable and more transparent for participants and the public. The administrative and cost burden to enforcement agencies of enforcing non-compliance will then reduce.

Enforcement agencies will be able to reduce the penalties for reporting and allocation failures in certain circumstances where the agency is satisfied that the person who made the error took reasonable care. However, the section 134 penalty for failing to surrender or repay units by the applicable due date does not leave room for agency discretion and applies automatically as soon as there is a failure to meet the due dates.

Potential adverse impacts on participants of a more rigorous compliance regime will be mitigated by ensuring that penalty levels are clear to participants, so that they understand the consequences of non-compliance and can plan accordingly. The current market price of carbon will be set using the average carbon price over the previous 12 months, as will be stated in regulations to be updated annually. Moreover, the penalty will be calculated in a way that reflects the size of the error, ensuring that there is consistency and proportionality in the setting of penalties. The removal of enforcement agency discretion will mean that non-compliance will be treated consistently and that participants will be able to predict compliance outcomes.

The following provisions are to be replaced:

- 134 – penalty for failure to surrender or repay units by the due date
- 134A – penalty for failure to submit emissions return by due date
- 135 – reduction in penalty
- 136 Additional penalty for knowing failure to comply

The following provisions are to be amended:

- 129(1)(a) and 132(1)(c) – amended to clarify that they do not apply to submitting an incorrect emissions return in that way, to avoid overlapping with infringements regime

The new penalty sections are:

- 30L-30V – infringement offences
- 134 – penalty for failing to surrender or repay units by due date
- 134A – penalty for failing to submit emissions return by due date
- 134B – penalty for failing to submit annual or closing allocation adjustment
- 134C – penalty for submitting an incorrect emissions return
- 134D – penalty for providing incorrect information in allocation application or adjustment
- 135A – due dates for payment of penalties
- 135B – deferred payment arrangements for payments of penalties
- 135C – penalties are debt due to Crown
- 194EG – creates a pecuniary penalty for clear-felling of permanent forestry land
- 194EJ – creates a pecuniary penalty for deforesting of permanent forestry land.

Redundant offences

The Bill makes operational changes to remove redundant offences for failure to comply with expired or repealed requirements. The relevant amended sections are:

- 129(1)(b)(iii)(B) – failing to keep records as required by a fishing allocation plan, without reasonable excuse
- 132(1)(e)(ii) – knowingly failing to keep records as required by a fishing allocation plan
- 133(1)(c)(ii) – failing to keep records as required by a fishing allocation plan with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,
- 222H(3) – failing to provide specified information in a previous application process for which the limitations period has now passed.

Permanent post-1989 forest clear-fell penalty.

The Bill introduces a new pecuniary penalty for the clear-felling of a permanent post-1989 forest (section 194EJ) This penalty will be based on a maximum value that will be determined using forest species-specific regulations (due to very different timber values and the clear-fell areas being possible). The courts will then determine the actual penalty, informed by a series of defences in the CCRA.

Forest allocation Plans

There is no need to retain section 222H(3) given that the references to the forest allocation Plan Allocations are moving from 'active' policy (and ongoing allocation) to concluded policy, and the timing for the review of the allocations has concluded.

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

YES

New forestry powers subject to review

The Bill contains a number of new powers that can be subject to review under section 144, including:

- Environmental Protection Authority (EPA) removal of forestry participants for persistent non-compliance.
- EPA removal of Carbon Accounting Areas where the transmission of interest process has not been followed and the person who should be required to be the participant refuses to meet their obligations.
- Revocation of offsetting approvals.
- EPA decisions on various new applications, including to reconfigure forestry areas; change forestry activities; enter permanent forestry; offset forestry with carbon equivalent forests; register temporary adverse events.
- EPA classifications of forestry land categories.
- Decisions around infringement offences.

The introduction of permanent post-1989 forestry is creating two new penalty regimes where the court will determine the penalty if someone clear-fells their forest. The Act and regulations will provide a maximum penalty but the court will determine the actual penalty, use of defences, and if the legislative defences are applicable.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

Infringement offences

Ministry of Justice (MoJ) was consulted on the proposal to introduce infringement offences for low-level offending against the rules of the NZ ETS. MoJ had no concerns about this proposal.

New surrender/repayment and reporting penalties

MoJ was consulted on the proposal to restructure existing penalties. MoJ considered that regimes in which determinations of guilt are made by non-judicial bodies are highly irregular and should be strongly discouraged. It noted that judicial oversight provides protection against possible abuses, or the appearance of abuses, of regulators' powers. MoJ viewed the taxation model as an exception, which may be justified due to the hugely technical nature of the regime and the overwhelming public interest in universal compliance.

MoJ believed it was important that the roles of regulator, enforcer, and adjudicator be distinct from one another. When these decisions are taken by the same body, there is a substantial risk that these decisions can be 'collapsed' into one choice to (or not to) proceed. Judicial oversight protects against the regulator determining and handing down penalties unchecked without adequate appeal or review processes. MoJ pointed out that regimes in which the regulator determines penalties can also create a perception that the regulator uses penalties to gather revenue.

MoJ did not agree that the proposal will remove agencies' discretion to reduce penalties and be administratively simple, nor that it will afford certainty to participants. It is proposed that MPI and the EPA will determine the 'mental state' of the participant and award a penalty accordingly. This places significant discretion, and a substantial burden, in the hands of the regulators. Determinations as to intention are highly subjective and should be appropriately left to a judge.

Response to MoJ feedback

Officials from the EPA, MPI and the Ministry for the Environment took into account MoJ's feedback, and on balance continued to recommend the proposed approach. The design of the NZ ETS compliance regime was deliberately modelled on the tax system, and the proposed approach would continue to align with the tax system. It is appropriate to align with the tax system because of the scale, complexity, and self-reporting nature of the NZ ETS, along with the high public interest in accuracy. Timely enforcement is required because there is a fiscal risk to the Crown if participants fail to accurately report and pay units.

MoJ's feedback influenced the design process for the administrative penalties approach. The requirement to publish operational guidelines was included on the basis of MoJ feedback as a way to increase the transparency and predictability of penalties for participants.

Permanent post-1989 clear fell penalty

MoJ was consulted as part of the development of the permanent post-1989 forest clear fell penalty (new section 194EJ described in 3.4 above). Their advice was incorporated into the final proposal which was put to Cabinet.

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?	YES
<p>New section 89(1A) provides that the EPA must publish data about participant non-compliance with the prohibition on the failure to surrender or repay units by the due date (such as a non-compliant participant's name and the penalty amount). New section 89A provides that the EPA must publish participant data on emissions and removals. Note we do not consider this information to be relevant personal information, but engaged with the Office of the Privacy Commissioner just in case (see 3.5.1).</p> <p>An amendment to section 27(3) amends the requirement for the EPA to make accessible by search the total number of each type of approved overseas unit in each holding account. The requirement to have this information accessible comes from the Kyoto Protocol. The Government has amended the structure of the provision as a result of another structural change that now treats Kyoto units as "approved overseas units". There has been no change to the Kyoto obligations or to the Act's compliance with the Kyoto Protocol. This change will not have any material impact on NZ ETS participants.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>We consulted with the Office of the Privacy Commissioner (OPC). The OPC confirmed that it is comfortable with the publication of individual-level greenhouse gas emissions and removal volume data for the purposes of enhancing transparency in the NZ ETS.</p> <p>The OPC recommended that a provision be added to allow for the withholding of personal information in some circumstances where this was considered likely to prejudice the privacy or personal safety of the person involved. This proposal will be considered as part of departmental analysis during the Select Committee process.</p>	

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><u>2015/16 Review of the NZ ETS</u></p> <p>The review of the NZ ETS in 2015/16 assessed the operation and effectiveness of the scheme in light of the Paris Agreement and New Zealand’s 2030 emission reduction target. As part of stage two of the review, public consultation was held on high-level issues, including targeted stakeholder meetings in urban and regional centres. A hui was organised in collaboration with advisors from the Climate Change Iwi Leaders’ Group. The Government received 345 submissions. A key theme in submissions was the need for regulatory or policy certainty. Submitters also raised the need for a long-term plan for how the NZ ETS will help New Zealand meet its emission reduction targets. A summary of submissions is available at: https://www.mfe.govt.nz/climate-change/new-zealand-emissions-trading-scheme/reviews-of-nz-ets/nz-ets-review-201516/nz-ets</p> <p>As a result of the review, the Government made in-principle decisions on a package of proposals to improve the operation of the NZ ETS in the 2020s.</p> <p><u>Improvements to the NZ ETS and A Better Emissions Trading Scheme for Forestry (2018)</u></p> <p>A consultation round was held in August and September 2018 on proposals based on the in-principle decisions to improve the operation of the NZ ETS (see above), and on forestry improvements. The Government received 253 submissions. Submissions generally supported the majority of forestry and non-forestry proposals. There was overall support for proposals to establish a process for coordinating and managing unit supply decisions, introduce regular auctioning, establish a new price ceiling and make proposed operational and technical improvements. Summaries of submissions are available at:</p> <p>https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/improvements-to-nz-emissions-trading-scheme-summary-consultation-responses.pdf</p> <p>https://www.mpi.govt.nz/dmsdocument/35295-emissions-trading-scheme-consultation-submissions-analysis-final</p> <p><u>2019 consultation on agricultural proposals</u></p> <p>The Government issued a discussion document and consulted from 16 July to 13 August 2019 on proposals to price agricultural emissions. Seventeen public information sessions and a webinar were held around the country. Around 600 people attended these public meetings. Two technical workshops were held with industry representatives and rural professionals. Officials called key iwi/Māori partners and corresponded with a wider group of iwi/Māori, offering the opportunity for hui or further engagement. A total of 3956 submissions were received. A summary of submissions will be available on the Ministry for the Environment’s website in October 2019.</p> <p>The Government’s consultation built on and responded to the <i>Action on Agriculture Emissions</i> report and recommendations of the Interim Climate Change Committee (ICCC). In developing its advice, the ICCC convened an Agriculture Challenge and Review Group to challenge the ICCC’s analysis and provide sector knowledge. The Group comprised representatives from key sector stakeholder organisations. The ICCC also engaged broadly, meeting with over 600 individuals and over 200 organisations at over 300 meetings and workshops. Information on the ICCC’s inquiry is available at https://www.iccc.mfe.govt.nz/what-we-do/agriculture/</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>The Ministry for the Environment and Ministry for Primary Industries consulted with a number of Government agencies in the process of developing this Bill. These agencies were the:</p> <ul style="list-style-type: none">• Environmental Protection Agency• Ministry of Business, Innovation and Employment• New Zealand Treasury• Ministry of Foreign Affairs and Trade• Department of Conservation• Ministry of Justice• The Office of Treaty Settlements• Te Puni Kōkiri <p>The Department of Prime Minister and Cabinet was informed.</p> <p>The Ministry for the Environment and Ministry for Primary Industries tested the development of the forestry policy with the Climate Change Forestry Reference Group, a group of industry participants formed to provide advice to Government. There was also targeted testing of the forestry options with a small group of Emissions Trading Scheme forestry experts.</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?	YES
<p>The Bill contains a provision (Schedule 1AA part 1 clause 14 – Cancellation of historic approved overseas units) that will:</p> <ul style="list-style-type: none"> • Cancel New Zealand-issued Assigned Amount Units (NZ AAUs) in private accounts. • Replace NZ AAUs in private accounts with an equivalent number of New Zealand Units (NZUs). • Cancel, without compensation, Assigned Amount Units (AAUs) from overseas registries, Certifying Emissions Reduction Units, Emissions Reduction Units and Removal Units from the first commitment period held in private accounts. <p>This provision is necessary to implement a decision made by the previous Cabinet in 2013 and to thereby resolve an operational issue and support regulatory predictability. NZ ETS participants and registry account holders were informed of the previous decision at the time. Given that NZ AAUs are fungible with NZUs, this will not impact the overall supply of units in the scheme. Imported AAUs held in private accounts are not, and have never been, eligible for use in the NZ ETS. Potential adverse impacts have been mitigated by re-engaging with stakeholders before making final decisions, ensuring that all feedback was taken into account.</p>	

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?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>One of the operational changes in the Bill is to enable the easier operation of the section 60 exemptions. Section 60 exempts by Order in Council a participant from being considered to be undertaking an activity or from certain emissions liabilities (i.e. reduce the impact on the participant). For the forestry sector, these exemptions are granted after emissions have occurred (e.g. deforestation has happened). The Act is being amended to make clear that the order can be issued after the activity or emissions have occurred (retrospectively).</p>	

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p><u>Infringement offence regime</u></p> <p>The Bill enables regulations to specify which offences already under the Act are infringement offences, with this detail to be set in regulations. The new infringement regime will allow enforcement agencies to take action against low-level offenders, particularly repeat offenders, without needing to expend significant financial and human resources in pursuing prosecution. Infringement offences are expected to apply to offences under sections 129, 131, 259 and 260. These infringement offences will not be appropriate for more serious non-compliance, including</p>	

4.4. Does this Bill:	
<p>knowing failures and wilful non-compliance under section 132 and intentional non-compliance under section 133.</p> <p>Over time it is expected that the infringement regime will significantly improve compliance rates.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill empowers the EPA to give forestry classifications to areas of land in order to make it easier for interested persons to determine their potential eligibility, obligations, and liabilities in relation to land and the NZ ETS. The EPA is also empowered to amend the forestry classifications. The forestry classifications will be publicly available and persons may rely on the classifications when deciding whether to invest in land or enter into the NZ ETS. The Bill provides that the EPA is not liable for anything that results in a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed. This is required in order to ensure that the EPA can publish forestry classifications without risk of legal action being taken against it.</p> <p>The Bill allows forestry participants to submit to the EPA 'raw data' before their emissions return is due and empowers the EPA to use the data to calculate the participant's emissions and removals and liabilities or entitlements. The participant can then choose to use the EPA's calculations in their emissions return. This is designed to make the emissions return requirements easier for participants as they will not need to undertake the calculations themselves. The Bill provides that the EPA is not liable for anything that results from its calculations and the calculations do not affect the participant's obligations under the Act (for example, to submit an accurate emissions return). This is required to ensure that the participant is still liable if they provide incorrect raw data to the EPA that results in the calculations being incorrect. This will also enable the EPA to use its existing powers to amend an emissions return if it is satisfied that the information is incorrect (which may result in the participant having to surrender or repay units under the existing provisions in the Act) without incurring any liability.</p>	

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?	YES
<p><u>Setting the price of carbon</u></p> <p>Under new section 30W, the Bill creates the ability for an Order in Council to set the price of carbon for the purpose of various calculations in the Act. This can prescribe the methodology for specifying the price of carbon and specify the price of carbon by applying the methodology – however, the resulting price is only used for limited penalty and levy-related provisions required to emulate unit prices. This regulation-making power does not enable the Crown to set the price of an emissions unit for sale or purchase.</p> <p>This power already exists in the CCRA to achieve price equity in the setting of the synthetic greenhouse gas levy, but will now also be used as a proxy for the carbon price in various financial penalties in the new compliance regime.</p> <p>Protections are built into this regulation-making power. Before making a recommendation to the Governor-General to make regulations, the Minister must be satisfied that consultation has occurred with people who are likely to be substantially affected by the regulations. The consultation process must meet certain procedural requirements, such as giving adequate notice and giving appropriate consideration to submissions.</p>	

Forestry decision-making powers

The following new or amended sections are relevant to forestry decision-making powers:

Part 4, subpart 1 - Participants

- 59A – removal for persistent non-compliance (Schedule 4 participants only).
- 60A – general exemption making power for post-1989 forests and permanent forestry.

Part 5, Subpart 1 – Deforestation

- 179A – forest land may not be treated as deforested in certain cases

Part 5, Subpart 3 – Pre-1990 offsetting forest land

- 186CA – variation to approved offsetting forest land application.
- 186G – EPA may revoke approval in certain circumstances.

Part 5, Subpart 4 – Post -1989 forest land (standard and permanent forestry)

- 188A – removing registration as participant in standard or permanent forestry in certain natural events or clearance for forest management
- 194AA – non-compliance for transmitted interests.
- 194CA-CC – application to reconfigure carbon accounting areas for standard or permanent forestry
- 194DA-DF – application to change activity on post-1989 forest land
- 194EC – ability to remove permanent post-1989 forestry registration.
- 194EH – setting the deemed value of timber for penalty purposes.

Part 5, Subpart 5 – Averaging accounting methodology

- 194GA – application for carbon equivalent forest land swap
- 194PA-PF – temporary adverse event land
- 194QA-AC – re-establishment
- 194RA-RB – carbon recovery
- 194SA-SB – ceasing to be temporary adverse event land before recovery
- 194TA – regulations for temporary adverse events
- 196A-196G – forestry classifications of land.

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
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Removal of the Fixed Price Option via Order in Council

Subpart 4 of Part 1 of the Bill provides that some specified amendments will commence either by Order in Council or on 1 January 2023. This includes the removal of the \$25 fixed price option price ceiling, which will be removed either when auctioning of NZUs begins or no later than 31 December 2022.

Amending schedules to reflect changes in international agreements

An amendment to section 50(8) enables Schedule 1, 2 or 2A to be amended or replaced via Order in Council, so that the schedule can set out an up-to-date form of the relevant international agreement.

Greenhouse gas definition

New section 4A creates a power via Order in Council to amend the definition of “greenhouse gas” in the Act to add one or more other gases, and set out any necessary transitional provisions.

Amendment to power exempting people from being participants, or from liability for a proportion of their emissions

Section 60 is an existing general power enabling regulations to exempt certain persons from being participants for the liability for certain emissions. The Bill amends this section to clarify it can exempt person in respect of an activity or emissions that occurred before the commencement of the Order.

General exemption for standard forestry and permanent forestry participants

New section 60A creates a power via Order in Council to grant a Schedule 4 forestry participant an exemption from any obligations under Part 4 or 5 of the Act and any corresponding regulations.

Best practice forest management

An amendment to section 179A has the effect of allowing participants to deforest areas for the purpose of best practice forest management without incurring surrender liabilities. Section 168(1)(nc) creates a regulation-making power to define the meaning of best practice forest management.

Exemptions for tree weeds

An amendment to section 184 allows a person to apply for pre-1990 forest land to be declared exempt land in order to remove tree weeds. New section 185A creates a regulation-making power to prescribe the types of tree weeds for which an application may be made.

Grant-funded forests

New section 197 provides that a participant in an activity of standard or permanent forestry on a carbon accounting area is not entitled to receive NZUs for removals that are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under section 197A (a grant-funded forest); and occur during the stand-down period for that forest prescribed in regulation made under section 197A.

Averaging

New sections 194FA to FD create the framework for averaging, while sections 194GA to GR create the rules for *carbon equivalent forest land swaps*. These sections determine how forest subject to averaging will earn units, and when they are liable to surrender units. *Carbon equivalent forest land swaps* allows a participant to establish an equivalent forest elsewhere and not need to surrender units.

New section 194HA provides the ability to create regulation to define how the emissions and removals for averaged forests are defined as well as the circumstances and methodologies for determining the number of units they are entitled to receive or obliged to surrender. This section also enables the methodologies for *carbon equivalent forest land swaps* to be made operational.

This section also provides for the terms associated with averaging and *carbon equivalent forest land* to be defined.

Temporary adverse events

New sections 194JA to JT detail how the *temporary adverse events* rule applies to forests under averaging or permanent post-1989 forest. If the *temporary adverse events* rule applies, the participant will not be required to surrender units for the loss of carbon, but will forgo earning units as the forest grows to the pre-event carbon stock.

New section 194JT provides for the creation of regulations to, amongst other things, declare what an adverse event is, the scale and size of the event and other necessary requirements.

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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Auctioning regulations – made via Order in Council

Section 30GA as amended and new section 30GD enable the making of auctioning regulations. Regulations will establish the operational detail for auctioning including:

- further qualifications for auction participation beyond being New Zealand Emissions Trading Register account holders
- further detail on the auctioning format and rules that will apply
- further details on the timing and scheduling of auctions, including the date that auctions will commence
- appointing an independent auctioning monitor and specifying its functions

The previous auctioning sections 30GA and 30G(1)(p) – which prescribed some details to be set out in auctioning regulations – will be repealed.

Unit supply regulations – via Order in Council

Provisions included in the Bill enable the Government to implement the decisions that it has taken to place a cap on emissions in the NZ ETS and to introduce auctioning. Safeguards apply; for instance, consultation will need to be undertaken before any regulations are made.

Section 30GB amended enables the making of unit supply regulations to place overall limits and price controls on emission units in the NZ ETS. This includes decisions on the:

- limit on the use of international units by participants
- number of NZUs to be auctioned
- number of NZUs expected to be provided through free allocation
- number of NZUs available in the cost containment reserve
- price trigger values for the price ceiling and (if applicable) price floor
- further operational detail on the cost containment reserve (new price ceiling), including when NZUs would be released, and whether there would be a single trigger level, or multiple trigger levels.

New section 30GC sets requirements for regulations about overall limits and price control settings.

Schedule 1AA cl 4 sets requirements on making the first set of regulations on overall limits and price controls for units.

Infringement offences – specified via Order in Council

Through new sections 30M and 30N, the Bill enables the making of regulations that would specify that some offences in the CCRA are strict liability infringement offences. The

Government plans to then specify a number of criminal offences as infringement offences for low-level offending.

This will allow enforcement agencies to effectively respond to low-level non-compliance without resorting to carrying out prohibitively expensive prosecutions against NZ ETS participants.

Non-compliant participants who make genuine mistakes may still be required to pay infringement fines or fees. Fees will be set up to \$1,000 for individuals and \$2,000 for body corporates. Enforcement agencies will also continue to publish guidance and to support participants to understand their obligations and avoid unintentional non-compliance.

Setting the price of carbon

New section 30W creates the ability for an Order in Council to be passed to enable regulations to set the price of carbon for the purpose of various calculations in the Act. This section replaces sections 233(4)-(5) and 236, which are repealed.

Phase-down of industrial allocation

New section 84A provides for the phase-down of industrial allocation from 2021. Regulations may be made via Order in Council to set phase-down rates for industrial allocation.

Regulations relating to now redundant Kyoto Protocol matters

The Bill repeals or amends various powers related to now redundant Kyoto Protocol matters:

- 30G(1)(d), (q) – regulations relating to part 2 (removal of prescription of matters in respect of the carry-over of assigned amount units, certified emission reduction units, and emission reduction units).
- 30GB – further provisions governing regulations made under section 30G(1)(q) – (removal of entire provision which applies if regulations made under section 30G(1)(q) specify that an NZU may be converted into a type of Kyoto unit other than a designated assigned amount unit).

Regulations for the cancellation and replacement of units in private accounts

The Bill amends the following provision for the cancellation and replacement of units in private accounts:

- 30G(3) – regulations relating to part 2 (amendment of provision concerned with regulations that do not apply to the transfer of units held in an account in the Registry)

It amends a number of powers relating to now redundant Kyoto Protocol matters:

- 30G(1)(b), (e), (ia), (j), (k), (3)

Aligning with the Paris Agreement

The Bill amends a number of provisions to align the CCRA with the Paris Agreement.

- 30G(1)(n), (4) – regulations relating to part 2 (replacement of “Convention or the Protocol” with “international climate change obligations”)
- 30I – incorporation by reference in regulations made under s 30G (as above)
- 50(1), (7), (8) – regulations (as above)
- 51 – incorporation by reference in regulations made under section 50 (as above)
- 52(4) – inventory must report to Minister on certain matters before certain regulations are made (as above)
- 163(5) – regulations relating to methodologies and verifiers (as above)
- 246 – regulations relating to synthetic greenhouse gas levy (as above)
- 258 – regulations relating to verifiers (as above)

Repeal of technical industrial allocation provisions

The Bill repeals two technical provisions concerning Australian eligible activities:

- 161A(1)(d), (3) – regulations in relation to eligible industrial activities (repeal of prescription for an allocation factor or factors for electricity, natural gas feedstock).
- 161B – Australian eligible industrial activities (entire provision repealed)

New forestry regulation-making powers

- 168(1)(na) – criteria for applications to reconfigure carbon accounting areas or change activities on post-1989 forest land
- 168(1)(nb) – ability to set unit rounding rules
- 168(1)(nc) – prescribing “best practice forest management”
- 185A – regulations re tree weed exemptions
- 186F(ca) – re new ability to vary approved offsetting land applications
- 194EH – regulations setting deemed values of timber for clear-fell penalty
- 194LA – regulations setting requirements for averaging methodology
- 194TA – regulations setting requirements for temporary adverse events
- 194UC – specifying forestry activities and information for raw data returns
- 196G – specifying matters relating to a new forest land eligibility map
- 197A – prescribing grant schemes and stand-down periods for excluded removal-eligibility.

Other changes relating to regulations

A number of changes have been made to ensure that regulations that are subsequently passed will be accounted for throughout the Bill. These are captured in the following provisions:

- 30G(1)(f) – fees for matters set in regulations
- 30G(1)(i) – prescribing forms
- 60B – incorporation by reference into s 60 regulations
- 70-71 – ability to create and amend allocation plans
- 166 – consultation procedure applied to new powers
- 167 – fees and charges applied to new powers
- 169-174 – incorporation by reference for new powers.

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?	YES
<p><u>Satisfying requirements for making regulations</u></p> <p>For both forestry and non-forestry sectors the Bill contains provisions (under Schedule 1AA cl 2) allowing the Minister of Climate Change to be satisfied that consultation being undertaken on the regulations is sufficient, even if that consultation occurs prior to the enactment of the Bill. This is needed for two key reasons:</p> <ol style="list-style-type: none"> 1) to enable the timelines of making the regulations to be met. For example, the new methodologies for calculating emissions for forestry need to be made by 1 October 2020 to be usable from 1 January 2021 2) to provide details to the public during the Select Committee consideration of the Bill (as much of the operative detail is in the regulations). <p><u>Values of timber used to calculate maximum clear-felling penalties set out in regulations</u></p> <p>We are putting the deemed values of timber that will be used to calculate maximum penalties for clear-felling of Permanent post-1989 forest into the regulations, not legislation. This is necessary because the potential maximum penalty for a large forest can be extremely variable due to the kind of forest which was clear-felled, and needs the added flexibility of being included in the regulations.</p> <p><u>Cancellation of 63x Permanent Forest Sink Initiative (PFSI) covenants outside covenant conditions</u></p> <p>The Bill provides for the cancellation of the 63 PFSI covenants outside the conditions of the covenant. These covenants were written in a way which allows the Crown to stop transferring units in certain situations and either party to cancel the covenant in others. We have arrived at these situations, but not in a way which meets the letter of the covenants.</p> <p>To provide clarity to the land owner on their options and to overcome a situation where the Crown is required to impose significant costs on the few land owners who do not elect to move into the NZ ETS (due to the cost recovery provisions of the Forests Act 1949), a legislative pathway to cancel the covenants is most effective and allows us to overcome other barriers to the transition. If the forest owner wants to remain in carbon forestry, the Permanent Post-1989 package of rules is a better option.</p>	