

Departmental Disclosure Statement

Climate Change Response (Auction Price) 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.

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.

21 January 2021

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Part One: General Policy Statement

General policy statement

This Bill enables a confidential reserve price to be set for auctions in the New Zealand Emissions Trading Scheme (NZ ETS) to ensure units sold at auction cannot be sold significantly below the prevailing secondary market price and thereby avoid unduly influencing the secondary market.

The NZ ETS is one of New Zealand's main tools for helping to meet our climate change targets under the Climate Change Response Act 2002 and our international commitments under the Paris Agreement. Auctions provide a mechanism for the Government to manage the supply of emission units into the market in line with our climate change targets.

Auctions will commence in March 2021. Reforms to the NZ ETS enacted in June 2020 set out the types of decisions that the Minister of Climate Change (the Minister) needs to make when recommending that auctioning regulations be made. Regulations have subsequently set the schedule and rules for auctioning. The June 2020 reforms did not enable a confidential reserve price to be set.

Most of the trading in units takes place on the secondary market, which is open for trading daily. Therefore, it is the secondary market that sets the price for emission units. Auctions, on the other hand, occur infrequently and are designed to allow the Government to sell units into the secondary market without disrupting its operation.

Without a confidential reserve price, there is a risk that auction participants will strategically bid to undercut secondary market prices. This would undermine the integrity of the NZ ETS. The changes in the Bill address this risk and protect the Crown against the fiscal cost of such underpricing.

The Bill will amend the Climate Change Response Act 2002 (the Act) and the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 (the regulations).

The Bill will enable the Minister to specify a methodology for the auction operator to set a confidential reserve price, based on the secondary market price, in addition to existing price controls. The confidential reserve price, and methodology used to set it for each auction, must be kept confidential to ensure they do not become the target of bidding strategies that may disrupt the market. The methodology must be set in consultation with the Minister of Finance.

The Bill means that the confidential reserve price only applies to auctions whose clearing price is between the two price controls already set by the regulations, because it only applies to auctions that are operating in normal circumstances. Therefore the confidential reserve price will never be higher than the lowest trigger price for the auction (set at \$50 for 2021).

Specifically, the Bill will amend the Act and regulations to—

- empower the Minister to make regulations to set a confidential reserve price methodology to enable the auction operator to set confidential reserve prices at auction:
- require the Minister to consult with the Minister of Finance on the methodology:
- prevent the sale of units at auction if the final auction clearing price does not match or exceed the confidential reserve price:

- require the auction operator and any other person to keep the methodology and calculated prices confidential.

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?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
The Bill is amending the Climate Change Response Act 2002 (the Act) that includes giving effect to New Zealand's obligations under the Paris Agreement. The amendments in this Bill support that purpose.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/regulatory-impact-statements/impact-5	
This Regulatory Impact Statement (RIS) was originally prepared for the complete set of policy decisions to set the rules for auctioning in the New Zealand Emissions Trading Scheme in early 2020. It includes analysis of the decision to set a confidential reserve price (then referred to as the technical reserve price). The Treasury has granted an exemption from providing a further RIS for this Bill on the basis that this policy issue had already been addressed in the earlier RIS.	

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
The quality assurance panel provided these comments when the original RIS was evaluated:	
Quality assurance Assessment	
The quality assurance panel reviewed the Regulatory Impact Assessment (RIA) and agreed that it meets the Quality Assurance criteria.	
Reviewer comments and recommendations	
The Panel considers the RIA provides an adequate description of the proposed changes being considered within the context of wider changes to the Emissions Trading Scheme (ETS) and provides a clear summary of the potential scale of these changes by quantifying the volume and value of ETS auctioning. We are satisfied that sufficient consultation has taken place around the options, and, where appropriate the public's concerns have been addressed	
Given the relatively narrow scope of the regulations and that an auctioning system is new to the New Zealand ETS, and only used in a small number of other jurisdictions, quantified information on the costs and benefits of the proposals is relatively limited. However, the panel is satisfied that the assessment includes the available information.	

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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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The policy to be given effect by this Bill is limited in scope and technical in nature and does not amend sections of the Climate Change Response Act 2002 that affect New Zealand's international obligations under the Paris Agreement. The Ministry of Foreign Affairs and Trade have been included in agency consultation on the policy provisions in 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?

The Ministry for the Environment has assessed the Bill, and considers that the limited scope and technical nature of the Bill means that it is not inconsistent with the principles of the Treaty of Waitangi. In particular, the Bill does not amend section 3A of the Climate Change Response Act 2002 (recognising and respecting the Crown's responsibility to give effect to the principles of the Treaty of Waitangi).

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
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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 the introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	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
The Bill requires the auction operator to provide information to the Chief Executive of the Ministry for the Environment about the bid volume and price of each bid in a way that does not identify the bidder. As the information will be anonymised, it will not qualify as personal information.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
As the information required to be shared by the Bill does not qualify as personal information, the Privacy Commissioner was not consulted.	

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 the proposed rules for auctioning in the NZ ETS was conducted in November and December 2019. The public were consulted on the need for a confidential reserve price (then referred to as a technical reserve price).</p> <p>In general submitters during that consultation were supportive of the introduction of a technical reserve price and did see the need for confidentiality, although a small number did not agree it was necessary.</p> <p>When the original auction rules were set without a technical reserve price (in August 2020) this raised public comment. Several market experts and commentators raised public concerns about the potential absence of a technical reserve price for NZ ETS auctions.</p> <p>The auction operator and the Environmental Protection Authority were consulted on an exposure draft of this Bill.</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
As stated above, the policy details were tested with the operational agencies required to enact the provisions of the Bill, namely the auction operator and the Environmental Protection Authority by consulting with them on an exposure draft of the Bill.	

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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

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

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>This Bill amends the regulation making power under s 30GA of the Act to enable regulations which authorise the Minister for Climate Change to set a methodology that the auction operator must use to calculate a confidential reserve price to apply to NZ ETS auctions. When setting the methodology, the Bill requires the Minister to</p> <ul style="list-style-type: none"> • consult with the Minister of Finance when setting the regulations • consider the main matters and additional matters under s 30GC of the Act that apply when making regulations about limits and price control settings for units • ensure the confidential reserve price cannot be set higher than the lowest cost containment reserve price trigger (to ensure the sale of reserve units is not affected). <p>The Bill also directly amends the Climate Change Response (Auctions, Limits, and Price Controls for Units) Regulations 2020 to introduce a confidential reserve price in time for the first scheduled auction on 17 March 2021.</p>	

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>The Bill requires that the methodology used to set the confidential reserve price, and any resulting prices, are kept confidential. While this is unusual, in this instance it is required to ensure that the reserve price does not become the target of strategic bidding behaviour.</p> <p>The Bill also contains a commencement date of 15 March 2021 which will require accelerated progress through Parliament to be met. The reason for this date is to ensure that the Bill can enable a confidential reserve price to be set prior to the first auction on 17 March 2021. The Bill includes provisional arrangements to enable the Minister to set and provide the first methodology to the auction operator prior to the amendments commencing.</p>	