

# Departmental Disclosure Statement

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Climate Change Response (Emissions Trading Scheme Agricultural Obligations) 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 and the Ministry for Primary Industries.

The Ministry for the Environment and the Ministry for Primary Industries certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 May 2024

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## Part One: General Policy Statement

This Bill amends the Climate Change Response Act 2002 (the **CCRA**) to remove agriculture activities from the New Zealand Emissions Trading Scheme (the **NZ ETS**).

The Bill supports the Government's coalition agreements and the National Party's manifesto commitment to keep agriculture out of the NZ ETS. It also aligns with Action 12, 'Finalise policy to keep agriculture out of the ETS', of the Coalition Government's Action Plan for New Zealand for the April to June 2024 quarter.

The CCRA, via the NZ ETS, currently requires—

- agricultural processors to surrender New Zealand units (**NZUs**) to pay for their agricultural emissions from 1 January 2025 (processors currently report their emissions); and
- animal farmers to report their emissions from 1 January 2026, and to surrender NZUs to pay for them from 1 January 2027.

Changes to the CCRA are needed to remove those obligations because—

- processor-level pricing of agricultural emissions may not effectively incentivise farmers to reduce their on-farm emissions, as on-farm behavioural changes may not be effectively recognised (processors may pass the same cost to all farmers regardless of their emissions efficiency). This also means that there would be little incentive to incorporate mitigations on-farm.
- applying a single price to all gases contradicts the intended split-gas pricing approach of New Zealand's legislated split gas targets.
- implementing the farm-level obligations in the NZ ETS could bring around 100,000 farmers into the NZ ETS as participants. This is likely to present significant administrative, compliance, and data management challenges. It would also be costly for farmers to comply with the system. Retaining any form of obligations for agriculture in the NZ ETS contradicts the Government's clear commitment to keep agriculture out of the NZ ETS.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p>Action on Agricultural Emissions, Interim Climate Change Committee, 30 April 2019. Available from <a href="http://www.iccc.mfe.govt.nz">www.iccc.mfe.govt.nz</a>.</p> <p>Low-emissions economy: Final report, New Zealand Productivity Commission, August 2018. Available from <a href="http://www.productivity.govt.nz/low-emissions">www.productivity.govt.nz/low-emissions</a></p> <p>Recommendations for Pricing Agricultural Emissions Report to Ministers, He Waka Eke Noa Primary Sector Climate Action Partnership, May 2022. Available at <a href="https://web.archive.org/web/20230124052157/https://hewakaekenoa.nz/wp-content/uploads/2022/06/FINAL-He-Waka-Eke-Noa-Recommendations-Report.pdf">https://web.archive.org/web/20230124052157/https://hewakaekenoa.nz/wp-content/uploads/2022/06/FINAL-He-Waka-Eke-Noa-Recommendations-Report.pdf</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Title: Regulatory Impact Statement: Amending the Climate Change Response Act to repeal New Zealand Emission Trading Scheme agricultural obligations</p> <p>Authoring agency: Ministry for Primary Industries and the Ministry for the Environment</p> <p>Date finalised: 20/03/2024</p> <p>URL: <a href="https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/ris-amending-the-climate-change-response-act">https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/ris-amending-the-climate-change-response-act</a></p>	

<b>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?</b>	<b>YES</b>
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A quality assurance panel with members from the Treasury and the Ministry for the Environment has reviewed the Regulatory Impact Statement (RIS), “Repeal of Processor-level Surrender Obligations Provisions for the Primary Sector in the Climate Change Response Act” produced by the Ministry for the Environment and Ministry for Primary Industries dated 13 March 2024. The panel considers that it partially meets the quality assurance criteria.

The RIS clearly states the problem with current surrender obligations at the processor-level and farm-level under the CCRA. The analysis shows that while the status quo could deliver emissions reductions and provide emissions pricing equity with other sectors, it is not practically feasible to implement due to administrative and compliance issues.

The case for legislative change to prevent current NZ ETS obligations at the processor-level from taking effect has been based on the fundamental assumption that an alternative, farm-level pricing system would be introduced no later than 2030. This has influenced the framing of the analysis and conclusions in the RIS.

As an alternative pricing system has yet to be developed outside the ETS, there is limited evidence about the effectiveness of the Ministers’ preferred option. The analysis has also been constrained by lack of recent modelling of potential options. Cost benefit analysis undertaken for the status quo, indicates that pricing emissions at a processor level in the ETS has a small positive benefit. It has been assumed that amending the CCRA to remove agricultural processor-level pricing would mean that the potential economic net benefit suggested by this modelling would be reversed, resulting in a net loss to New Zealand society. However, the applicability of this analysis is limited because under the CCRA, processor-level pricing used in the analysis would be superseded by farm-level surrender obligations in 2027 and this not included in the modelling.

The RIS acknowledges that there are significant uncertainties and risks associated with the preferred option. The option to defer processor-level pricing, effectively extends out the current ETS backstop for processor only obligations and could potentially help to mitigate some of these risks if the alternative agricultural pricing mechanism is delayed or not progressed.

Partial consultation has been undertaken previously, but the full range of options in the RIS has not had the benefit of broad public consultation and there will be limited opportunity for consultation during the Select Committee process.

It will be important to continue monitoring the impact on emission reduction targets.

<b>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?</b>	<b>NO</b>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>For the potential costs and benefits of the preferred option, please refer to the associated Regulatory Impact Statement, pages 17 to 30.</p> <p>URL: <a href="https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/ris-amending-the-climate-change-response-act">https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/ris-amending-the-climate-change-response-act</a></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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Officials have consulted with MFAT on the Bill as part of the agency consultation process.

The Bill is not inconsistent with New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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As part of the policy development process, officials consulted with multiple Government agencies including Te Arawhiti and Te Puni Kokiri.

Although the implementation of this policy was not identified to have any inconsistency with the principles of the Treaty of Waitangi, it was noted that Māori have significant interests in agribusiness and forestry, through both investment and settlement assets. Also relevant is that iwi, hapu, and Māori are likely to face unique challenges to transitioning to lower emissions agriculture (for example, as related to complex ownership structures, difficulties in changing land use and raising finance, and other historical barriers).

Previous engagement with the public has also provided relevant insights. In November 2022, the Government consulted on the design for an alternative agricultural emissions pricing system. As part of this consultation submissions were invited on an interim processor-level levy system, with a similar architecture to the processor-level backstop provisions in the NZ ETS.

Māori submitters did not support an interim processor levy citing the compliance cost and complexity that would lead to inefficient outcomes with the approach providing no real incentive for farmers to reduce emissions. Some Māori submitters expressed concern that the interim processor levy could become entrenched rather than it being truly interim.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>
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<b>NO</b>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>This Bill does not remove create, amend, or remove offences or penalty provisions in the principal act (the Climate Change Response Act 2002). This bill proposes to remove agriculture activities from the NZ ETS, with the effect that persons carrying out these activities in future will not be subject to the offences and penalties regime for the NZ ETS for those activities. The offences or penalties provisions in the Climate Change Response Act 2002 will continue to apply to the remaining participants in the NZ ETS without amendment.</p>	

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## Privacy issues

<b>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?</b>	<b>NO</b>
<p>This Bill does not create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information. The bill proposes to remove agriculture activities from the NZ ETS, with the effect that persons carrying out these activities will not be subject to provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information that continue to apply to the participants in the NZ ETS.</p> <p>The provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information in the Climate Change Response Act 2002 will continue to apply to the remaining participants in the NZ ETS without amendment.</p>	

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## 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>We have sought and received Cabinet approval for the release of the drafting instructions and legislation in draft to the Environmental Protection Authority (EPA) on an in-confidence basis and subject to legal professional privilege.</p> <p>Last year, the Government consulted on deferring NZ ETS reporting obligations for animal farmers with 1,225 submissions received. Through this consultation, most agricultural sector submitters continued to support an agricultural emissions pricing system outside of the NZ ETS as they considered it would provide greater opportunities to develop a more effective solution.</p> <p>Māori submitters identified there would be increased administrative costs as a result of animal farmers' obligations under the NZ ETS. The majority of submissions received who opposed the deferral expressed concern about the delays to pricing agricultural emissions and the associated impact that would have on agricultural emissions reductions.</p> <p>In November 2022, the Government consulted on the design for an alternative agricultural emissions pricing system. As part of this consultation submissions were invited on an interim processor-level levy system, with a similar architecture to the processor-level backstop provisions in the NZ ETS.</p> <p>Sector submitters opposed an interim processor-level levy for pricing agricultural emissions. They argued that such an approach would distract from the intended long-term, farm-level pricing system and alienate the farming community. They stated processor-level pricing, without complementary farm incentives, would be largely ineffective at driving actual emissions reductions, hampering progress towards reduction targets.</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>We have consulted with the EPA to ensure that the operational aspects of the policy are workable. This included seeking Cabinet approval to share draft legislation with the EPA during the drafting process.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
The Bill does not propose to have retrospective effect. Persons carrying out agriculture activities (in this case animal and fertiliser processors who are currently required to report their emissions) will cease to be participants in the NZ ETS from the day following Royal assent. However, the Bill enables the EPA to administratively enter a 2023 date in the participant register to avoid the issue of automatic notices for 2024 emissions returns. This date is administrative only and explicitly does not affect the actual effective date for these persons ceasing to be participants.	

### Strict liability or reversal of the usual burden of proof for offences

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

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>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?</b>	<b>NO</b>

### Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
The Bill amends section 2A of the CCRA, by repealing sections 2A(5B) and (5D), which enabled delegated legislation to be made to commence obligations in that Act for specific agriculture activities in the NZ ETS.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill repeals powers to make delegated legislation, specifically sections 2A(5B) and (5D), and sections 161G and 161H.	

### Any other unusual provisions or features

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