



Second order amendments to Climate Change Response Act 2002

Date:	16 July 2009	MfE Priority:	Urgent
Security Level:		Number of Attachments:	One
		MfE Ref No:	09-B-01973

Action Sought

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Minister for Climate Change Issues Hon Dr Nick Smith	Please indicate which second order changes you wish to include in a Cabinet paper proposing amendments to the Climate Change Response Act 2002.	20 July 2009.
Associate Minister for Climate Change Issues (International Negotiations) Hon Tim Groser	Note.	

Ministry for the Environment Contacts

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Background

The New Zealand Emissions Trading Scheme (NZ ETS) was established under the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 Amendment Act).

Since the 2008 Amendment Act was passed, officials have identified a number of second order issues with the Act. Changes to the legislation would be beneficial to address these second order issues. For the most part, these changes involve clarifying provisions where the meaning of the Climate Change Response Act 2002 (Act) is not as clear as it could have been. In a few cases, officials consider that clarification is critical to the effective functioning of the NZ ETS.

You have indicated you wish to make some substantive changes to the NZ ETS via an amendment bill to be introduced in September 2009, and passed into law by early December 2009 (Amendment Bill). Officials recommend that you consider including a number of second order amendments in the Amendment Bill.

Possible items for inclusion in Amendment Bill

Attached to this report is a list of second order amendments that officials from a number of agencies recommend for inclusion in the Amendment Bill. The list includes amendments proposed by the Ministry of Economic Development and the Ministry of Agriculture and Forestry.

To assist you, the proposed amendments are classified as being either high, medium or lower priority relating to whether the changes are strongly recommended, highly desirable or useful to have. If none of these amendments are made, officials consider that the Act is workable. However, there is no doubt that making at least some of these amendments would be very useful.

There are 13 proposed changes listed as high priority, 9 changes listed as medium priority and 7 changes listed as lower priority.

All but one of the proposed changes to the Act relate to the NZ ETS. Officials are working through a number of further issues which could result in a small number of additional proposed amendments. For example, some stakeholders have indicated an interest in extension of the opt-in provisions in the Act as they relate to natural gas. Officials are currently investigating the feasibility of this proposal. Officials are also considering possible changes to the forest land definition in the Act.

Fiscal implications

Most of the proposed changes do not have a fiscal impact while a small number have a small positive fiscal impact. These include the proposed inclusion of egg producers and live animal exporters in the scheme, as well as the ability to charge fees for emissions rulings.

Policy issues with significant fiscal implications

There are two amendments considered by officials that are policy decisions with reasonably significant fiscal implications. In view of this, they are not included in the attached list. Instead, we have outlined each of the issues below, and seek your guidance on whether you wish to include these matters in a paper for Cabinet's consideration.

Removing the requirement to deduct emissions from deforestation of tree weeds from the forestry allocation

Original ETS policy was that the exemption for deforestation of tree weeds would be funded from a standalone budget. However, the Act as drafted requires that the emissions from deforestation of the tree weed exemptions (potentially as much as 2.7 million NZUs) be deducted from the 55 million unit pre-1990 forestry allocation pool.

In order to give effect to the original policy intention, amendments would be needed to make it clear that the volume of emissions from deforestation of tree weeds is not deducted from the 55 million units available for the forestry allocation. However, there are significant fiscal implications that need to be taken into account in making such an amendment.

In early consultation material, the previous government indicated that the tree weed exemption would be funded from a standalone budget of 0.8m NZUs in the CP1 (approximately \$20m). At the time, this was estimated on the basis of 1250ha being deforested in the CP1. Recent advice from Scion (December 2008) indicates that deforestation of tree weeds in CP1 could be slightly higher than 1250ha, being 1551ha (approximately 1m NZUs) (approximately \$24.8m). The cost is estimated based on 640 tonnes CO₂ per hectare at a price of \$25 per tonne (640 tCO₂/ha is considered representative of tree weed forest – dense but relatively small trees).

The total liability for the tree weed exemption for CP1 and beyond is estimated as being about 1.7 - 2.7m NZUs (approximately \$43.3 - 67.6m).

Your preference is sought whether to amend the Act to remove the requirement to deduct emission from deforestation of tree weeds from the forestry allocation.

Exclusion of fugitive coal seam emissions

The cost of emissions to New Zealand attributable to fugitive coal seam gas is estimated at roughly \$16 million per annum. This figure is based on a price of \$25 per tonne.

New Zealand is accountable for these emissions under the Kyoto Protocol. It is consistent with the principles of the Act that persons carrying out the activity of mining coal should be accountable for the costs associated with emissions from fugitive coal seam gas.

However, there are some practical considerations that need to be taken into account. It is difficult to measure the amount of fugitive emissions from individual coal mines, and there is considerable variability in emissions both between and within individual mines. Accordingly, there is strong stakeholder resistance to inclusion of fugitive coal seam gas in the NZ ETS due, at least in part, to a perception that the emissions factor associated with these emissions is very conservative so that the costs may be over-estimated.

Officials are working with the relevant international bodies to clarify the issues associated with measurement. It is hoped that this will reduce the cost to New Zealand of fugitive coal seam emissions. If these discussions are successful, relevant regulations could incorporate the appropriate changes.

Again, your preference is sought whether to exclude fugitive coal seam emissions from the NZ ETS.

Recommended Action

We recommend that you direct officials in preparing material for Cabinet to:

(a) **Include** an amendment to the Climate Change Response Act 2002 to remove the requirement to deduct emissions from deforestation of tree weeds from the forestry allocation **Yes / No**

(b) **Include** an amendment to exclude fugitive emissions from coal seam gas from the NZ ETS **Yes / No**

(c) **EITHER**

[Dealing with the possible amendments in blocks]

i. **Agree** to pursue the high priority second order amendments to the Climate Change Response Act 2002 **Yes / No**

ii. **Agree** to pursue the medium priority second order amendments to the Climate Change Response Act 2002 **Yes / No**

iii. **Agree** to pursue the lower priority second order amendments to the Climate Change Response Act 2002 **Yes / No**

OR

[Dealing with the possible amendments individually]

iv. **Indicate** which of the second order amendments you wish to pursue:

High Priority Amendments

1. Giving the Chief Executive power to specify and approve locations in the forest area where information will be collected **Yes / No**
2. Creating the ability to apply for a tree weed exemption for deforestation since 1 January 2008 **Yes / No**
3. Enabling the delegation of the Registrar's Powers **Yes / No**
4. Creating the ability to waive fees and charges **Yes / No**
5. Creating the ability to charge fees for emissions rulings **Yes / No**
6. Removing potential time lag for other removal activity participants to earn emission units **Yes / No**
7. Requiring record keeping by primary participant following opt-in **Yes / No**

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| 8. Clarifying the inclusion of emissions from biofuel combustion | Yes / No |
| 9. Removing "Producing cable using a nitrogen cure process" as a mandatory activity | Yes / No |
| 10. Clarifying ability to make changes to composition of joint participant registrations | Yes / No |
| 11. Defining farming in relation to land ownership | Yes / No |
| 12. Including egg producers and live animal exporters in the scheme | Yes / No |

Medium Priority Amendments

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| 1. Clarifying the treatment of mining natural gas within the exclusive economic zone (EEZ) | Yes / No |
| 2. Clarifying that section 64 directions will not be published | Yes / No |
| 3. Clarifying the Chief Executive's forestry-related reporting obligations | Yes / No |
| 4. Clarifying the ability to delay registration of forestry participant until fees and charges paid | Yes / No |
| 5. Confirming pro rata approach for NZUs earned when land within a Carbon Accounting Area is transferred | Yes / No |
| 6. Providing for removal from the Register of Participants after deforestation obligations have been met | Yes / No |
| 7. Clarifying cost benefit analysis requirements in exemption provision | Yes / No |
| 8. Clarifying that only a nominated entity can submit a return for a consolidated group | Yes / No |
| 9. Restricting timing for electing to have activities removed from consolidated groups | Yes / No |

Lower Priority Amendments

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| 1. Requiring the Registrar to give effect to directions | Yes / No |
| 2. Inserting and applying a definition of "Crown holding account" | Yes / No |
| 3. Clarifying relevance of subsequent commitment periods to NZU issuance | Yes / No |
| 4. Creating enabling provision to allow amendments to Annexes I and II of the UNFCCC and Annex B of the Kyoto Protocol to be reflected in Schedules I and II | Yes / No |

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| 5. Providing for authorised representatives in respect of joint activities | Yes / No |
| 6. Excluding llamas and alpacas | Yes / No |
| 7. The “further technical amendments” in the attached list | Yes / No |

John Scott
Acting Manager, Emissions Trading Policy Team

Date

Hon Dr Nick Smith
Minister for Climate Change Issues

Date