

The New Zealand government has decided to use an emissions trading scheme for greenhouse gas emissions as part of its response to climate change. Emissions trading will help reduce emissions, encourage and support global action on climate change, and help put New Zealand on a path to sustainability. This factsheet explains the contents of the Climate Change (Emissions Trading and Renewable Preference) Bill.

# A Guide to the Climate Change (Emissions Trading and Renewable Preference) Bill

Factsheet 13



December 2007

The Climate Change (Emissions Trading and Renewable Preference) Bill was tabled in Parliament on 4 December 2007.

The Bill has two parts.

- > **Part 1:** amends the Climate Change Response Act 2002 to introduce a greenhouse gas emissions trading scheme covering all sectors and all gases.
- > **Part 2:** amends the Electricity Act 1992 to create a preference for renewable electricity generation by implementing a 10-year restriction on new baseload fossil-fuelled thermal electricity generation, except to the extent required to ensure the security of New Zealand's electricity supply.

## Part 1: Emissions trading scheme

In September 2007, the government announced details of a New Zealand greenhouse gas emissions trading scheme. Part 1 of the Bill implements the scheme.

Like any emissions trading scheme, the core obligation of participants covered by the New Zealand scheme is to surrender one emission unit for each tonne of greenhouse gas emissions that the participant is responsible for.

To meet this obligation, participants also have to monitor their activities and calculate any emissions that arise from their activities.

The emissions trading scheme also provides for participants who do activities that remove greenhouse gas emissions from the atmosphere to earn one emission unit for each tonne of emissions they remove. They can then sell the emission units they earn on the market for a profit.

## Amendments to existing provisions for the Registry and Inventory Agency

Clauses 4 to 42 of the Bill amend the existing provisions of the Climate Change Response Act 2002 (CCRA).

Most of the amendments are to Part 2 of the CCRA, which establishes the New Zealand Emission Units Register (NZEUR). These amendments extend the scope of the NZEUR to allow:

- > New Zealand Units (NZUs) to be created, held and transferred between account holders
- > participants to surrender NZUs and other units (including Kyoto units) to meet their emissions trading scheme obligations
- > linking of the emissions trading scheme to the international Kyoto market (clause 28 (new section 30E) allows people to convert NZUs into Kyoto units for transfer to overseas buyers)
- > linking of the emissions trading scheme to other countries' domestic trading schemes (overseas registries and emission units can be approved for linking to the emissions trading scheme by regulation when such linking is considered appropriate).

The amendments re-enact the existing regulation-making powers in section 50 of the CCRA, enabling restrictions to be placed on NZEUR accounts, units and transactions. These powers are being moved from Part 3 of the Act into Part 2 so that all the NZEUR provisions will sit together in the amended Act.

These powers include the ability to restrict the type of emission units that may enter the NZEUR (clause 28, new section 30G). If, for example, the government decides to restrict the types of Assigned Amount Units that may enter the NZEUR, it would use this power. Importantly, the amendments make clear that restrictions of this type will only apply from that date forward to emission units not already held in the NZEUR.

There are also amendments to the inventory agency provisions of the CCRA. The “inventory agency” (which is in practice the Ministry for the Environment) is responsible for managing New Zealand’s inventory of greenhouse gas emissions as required under the Kyoto Protocol. The amendments to these provisions (clauses 30–42) are technical only, aligning the existing Part 3 with the other amendments.

### **New provisions for the New Zealand emissions trading scheme**

Clause 43 of the Bill inserts new Parts 4 and 5 into the CCRA. New Parts 4 and 5 contain provisions to implement the core provisions of the emissions trading scheme, including:

- > who is covered by the scheme and at what date
- > what their obligations are
- > compliance and enforcement of obligations
- > allocation of emission units
- > certain sector-specific provisions.

#### *People covered by the scheme – who are they and at what date are they covered?*

People with obligations under the emissions trading scheme are called “participants”. Participants are the people who do the activities that are defined as resulting in greenhouse gas emissions, and who therefore have obligations to calculate the emissions from their activities and surrender one emission unit for each tonne of those emissions. Participants are also the people who do activities defined as removing greenhouse gas emissions from the atmosphere, who may receive one emission unit for each tonne of emissions removed.

Clause 44 of the Bill inserts new Schedules 3 and 4 into the Act. These schedules define the activities that result in, or remove, emissions. Different parts of these schedules apply from different dates (see clause 4). This means that people who do the activities in the schedules only become participants (or may choose to do so) from the dates the schedules apply. This allows for a staggered entry of different sectors into the emissions trading scheme.

**Schedule 3:** any person who does an activity listed in Schedule 3 must register as a participant under the emissions trading scheme (see clause 43, new sections 54 and 56). People only have to register after the date the relevant part of Schedule 3 (where their activity is listed) applies. The activities in Schedule 3 apply to the following sectors on the following dates:

- > **Part 1:** forestry (pre-1990 forest land) – applying from 1 January 2008
- > **Part 2:** liquid fossil fuels (transport) – applying from 1 January 2009
- > **Part 3:** stationary energy – applying from 1 January 2010
- > **Part 4:** industrial processes – applying from 1 January 2010 (except for the importation of sulphur hexafluoride, which applies from 1 January 2013)
- > **Part 5:** agriculture (possibility for either a processor-level or farm-level obligation) – applying from 1 January 2013
- > **Part 6:** waste – applying from 1 January 2013.

**Schedule 4:** any person who does an activity listed in Schedule 4 may elect to register as a participant under the emissions trading scheme (see clause 43, new sections 54 and 57) after the date the relevant part of Schedule 4 (where their activity is listed) applies. The activities in Schedule 4 apply to the following sectors:

- > **Part 1:** forestry (post-1989 forest land) – applying from 1 January 2008
- > **Part 2:** industrial processes (removal activities) – applying from 1 January 2010
- > **Part 3:** transport (major jet fuel purchasers) – applying from 1 January 2008
- > **Part 4:** stationary energy (major coal and natural gas purchasers) – applying from 1 January 2009.

People who do the activities in Schedule 4 may elect to register as participants at the times defined in new section 57. They may also elect to deregister at the times defined in new section 58.

New section 60 allows the Minister to exempt a person who would otherwise be a participant from the emissions trading scheme for all or some of the emissions that result from a defined activity that the person undertakes. Exemptions may only be provided when the strict criteria in section 60 are met (except for Negotiated Greenhouse Agreement firms, which are eligible for an exemption due to their previous commitments to limit their emissions).



### *Participant obligations*

New sections 61 to 66 state the core obligations and entitlements of participants. Participants must:

- > have an account to hold emission units
- > monitor their emissions and removal of emissions in accordance with methodologies that will be prescribed in regulations
- > report annually by 31 March on any emissions or removals that resulted from their activities in the previous year (except for post-1989 forest participants, who may report at the times defined in new section 167)
- > surrender one emission unit for each tonne of emissions (or earn one emission unit for each tonne of emissions removed)
- > retain records showing their emissions and removed emissions for seven years.

### *Compliance and enforcement*

Subparts 3 to 5 of new Part 4 contain the main administrative provisions of the emissions trading scheme. These provisions give the scheme administrator (called the “chief executive” in the Bill) certain functions aimed at ensuring participants comply with their obligations. The administrator’s functions include:

- > requiring or obtaining information from participants about their activities, emissions and removed emissions (new sections 82–95)
- > issuing “emissions rulings” to help people meet their obligations under the scheme – these are similar to binding rulings issued under tax legislation (new sections 96–105)
- > correcting errors in emissions reports received from participants and issuing assessments where participants have failed to report (new sections 106–115)
- > taking enforcement proceedings and imposing penalties where participants have not complied with their obligations (new sections 116–130).

Subpart 5 gives the right of review and appeal to people who wish to dispute certain decisions made by the emissions trading scheme administrator.

New section 178 provides a transitional arrangement for penalties. Participants will not be subject to civil penalties for any shortfall in the number of units they were supposed to surrender if that shortfall was caused by reporting errors made the first time they were required to report on their activities, emissions and removed emissions.

### *Allocation of emission units*

Subpart 2 of new Part 4 governs allocating New Zealand Units (NZUs) either by public tender or for free.

New section 67 enables the Minister to issue a certain number of NZUs into a Crown holding account after having regard to certain matters. New section 68 then authorises making allocation plans governing the free allocation of NZUs. NZUs can only be freely allocated under an allocation plan. Once an allocation plan is made, NZUs must be allocated freely in accordance with that plan.

New sections 69 to 71 require the making of allocation plans for freely allocating NZUs to the owners of pre-1990 forest land and to certain people in the industrial and agriculture sectors. These sections limit the total number of NZUs available for allocation within each sector, but empower the Minister to determine through the allocation plan who is eligible to receive a free allocation of NZUs and how many NZUs each person will receive. New section 72 makes clear that no one, other than a person named in sections 69 to 71, may receive a free allocation of NZUs.

New sections 73 to 74 contain the process the Minister must follow before making an allocation plan. This provides an opportunity for people who may be eligible for a free allocation of NZUs to demonstrate both their eligibility and exact entitlement. It also allows the public to have input into how the plan proposes to freely allocate NZUs.

New section 75 empowers the Minister to sell NZUs by public auction. Finally, new section 76 requires the Minister to ensure the Crown holds a number of Kyoto units equal to the number of NZUs it issued into Crown accounts by the end of the Kyoto Protocol’s “true-up” period. This is required to help ensure New Zealand meets its obligations under the Kyoto Protocol.

Some aspects of allocation policy are yet to be decided and will be subject to ongoing stakeholder engagement in 2008. Also, the planned review of the emissions trading scheme (as required by new section 147) must consider aspects of allocation policy, including the emissions pricing policies of New Zealand’s major trading partners and the implications of these policies vis-à-vis allocation.

### *Sector-specific provisions*

New Part 5 of the Climate Change Response Act 2002 contains provisions specific to certain sectors within the emissions trading scheme: forestry (Subpart 1), transport (Subpart 2) and stationary energy (Subpart 3).

Most of these provisions relate to the forestry sector. They govern who is, or may be, a participant for pre-1990 forest land and post-1989 forest land. The provisions also include exemptions from being a participant for the owners of certain pre-1990 forest land. They also specify certain requirements for when forestry activities are deemed to have occurred, and when participants must report those activities and the emissions (or removed emissions) resulting from them.

The provisions specific to the transport and stationary energy sectors cover the ability of major purchasers of jet fuel, coal and natural gas to elect to become participants and the effect of that election on Schedule 3 participants in the transport and stationary energy sectors.

### **Consequential amendments**

Clauses 45 to 65 consequentially amend the following pieces of legislation:

- > Income Tax Act 2004 and Income Tax Act 2007 to provide for the tax treatment of units transferred for forestry activities
- > Forests Act 1949 and Forestry Rights Registration Act 1983 to reflect the new emissions trading scheme provisions
- > Personal Property Securities Act 1999 to allow the registration of security interests over emission units on the Personal Property Securities Register.

### **Administration and review**

The amendments provide for administrative flexibility, allowing different government departments to be responsible for different parts of the CCRA as appropriate. Nonetheless, the Ministry for the Environment will retain overall responsibility for the CCRA.

It is envisaged that the emissions trading scheme will be initially implemented by the Ministry of Economic Development (MED). MED will be supported by other agencies where necessary (for example, the Ministry of Agriculture and Forestry with respect to participation of the agriculture and forestry sectors in the scheme).

These arrangements will be reviewed after a period to assess whether it is necessary to make any changes to how the CCRA, including the emissions trading scheme, is administered.

### **Part 2: Preference for Renewable Electricity Generation**

In October 2007, the government released the New Zealand Energy Strategy (NZES) and adopted a target for renewable electricity generation of 90 per cent of New Zealand's electricity generation by 2025. Consistent with this, the NZES states a clear preference that all new electricity generation be renewable, except to the extent necessary to maintain security of supply. The NZES signalled consideration of regulatory options under the Electricity Act 1992 to support this objective.

Part 2 of the Bill inserts a new Part 6A into the Electricity Act 1992 to create a preference for renewable electricity generation. It does this by providing for a 10-year restriction on new fossil-fuelled thermal generation, except to the extent required to ensure the security of New Zealand's electricity supply. The provisions address security of supply issues by enabling exemptions from the restriction for new fossil-fuelled thermal generation that is required to address security of supply concerns.

## **Where to go for more information**

For more information on the government's climate change work, including 'The Framework for a New Zealand Emissions Trading Scheme' and a series of emissions trading factsheets, visit [www.climatechange.govt.nz](http://www.climatechange.govt.nz)

For more information on the select committee process, including calls for submissions on the Bill, visit [www.parliament.nz/en-NZ/SC](http://www.parliament.nz/en-NZ/SC)